Supreme Court of the United States.

OCTOBER TERM, 1879.

No. 489.

B. D. DAUTERIVE ET AL., APPELLANTS,

vs.

THE UNITED STATES, APPELLEES.

REPLY TO BRIEF FOR APPELLEES.

EDWARD JANIN,
Of Counsel for Appellants.

Judd & Detweiler, Printers, Washington, D. C.

Supreme Court of the United States.

OCTOBER TERM, 1879.

No. 489.

B. D. DAUTERIVE ET AL., APPELLANTS,

vs.

THE UNITED STATES, APPELLEES.

REPLY TO BRIEF FOR APPELLEES.

The brief for the appellee bases the defense mainly upon the fact and terms of the decision and opinion reported in 15 Howard, page 14.

We propose to discuss here two questions, viz:

1st. Does that decision deprive the courts of jurisdiction, under section 11 of the act of June 22, 1860, to take cognizance of this case?

2d. If jurisdiction exists, what was it that was decided in 15 Howard? Does that decision paralyze the present intelligence of the Court? In other words, was the claim then passed upon the same that is now to be passed upon? And, even if it be the same, is not this Court at liberty to give due weight to the very important *new* evidence now first presented?

The 11th section of the act of June 22, 1860, (12 Stat. L., p. 87,) provides that the United States district courts shall have jurisdiction of claims upon private titles to land, within the States of Florida, Louisiana, and Missouri, "where such lands are claimed by complete grant or concession, or order of survey *duly executed*, or by other mode of investiture of the title thereto in the original claimant or claimants, by separation thereof from the mass of the public domain, either by actual survey or definition of fixed natural and ascertainable boundaries or initial points, courses and distances, by the competent authority, prior to the cession to the United States of the territory in which said lands were included."

It is evident that the jurisdiction does not depend upon the completeness in point of *form* of the title, provided the title (which may be a mere "order of survey *duly executed*") was issued by the competent authority "prior to the cession to the United States." (See McMicken *vs.* United States, 97 U. S. Rep., 204.)

Nor does it depend upon whether or not the title-paper comes from the supreme authority—for orders of survey, in Upper Louisiana, at least, always came from the Lieutenant Governors. But it is different where the title comes from a mere *de facto* government. In such case the jurisdiction does depend upon the completeness in *form* of the title: that is, the title must be a final and complete grant, leaving nothing more to be done by the political power. (See U. S. *vs.* Baltimore, 98 U. S. Rep., 424.)

The eleventh section of the act of 1860 provides expressly that in the latter case the title must be a "*perfected*" one.

The opinion of this Court in the case of Scull (98 U. S., 410) uses some expressions which, like all other productions of human intellect, might mislead those who do them the injustice of considering them without reference to their context. Thus, that opinion, though considering the act of 1860, with reference to a title emanating from a *de jure* govment, says, page 419: "The title must be complete under the foreign government." And again, on the same page, but in a different paragraph: "The right to sue here given is not on an inchoate or imperfect title." But the context of these two expressions shows unmistakeably that the idea of completeness there conveyed is *not* of completeness in point of the *form* of the document creating the right, but of the completeness of the *segregation* of the tract claimed from the mass of the public domain. Thus, the first of the above expressions reads, with its context, as follows:

> "The title must be complete under the foreign government. The land must have been identified by an actual survey with metes and bounds, or the description in the grant must be such that judgment can be rendered with precision by such metes and bounds, natural or otherwise."

The other expression, with the context, reads as follows:

> "The right to sue here given is not on an inchoate or imperfect title. It is not on a perfected grant for an unknown location, or for a given quantity within defined out-boundaries," etc.

The foregoing observations are material in the present case, because when it was here before, this Court held it had no jurisdiction of the complete title presented by the claimants, the completeness of the title consisting in the finality of the title-papers, and the completeness of the acts of the authorities from whom our title came. The question of completeness of *segregation* was not considered in connection with the decision refusing jurisdiction over the title as resulting from the confirmation by the Spanish authorities of the preexisting title, which title by confirmation the Court said was a complete one, as partaking of the nature of the anterior title; and the French anterior title being, as the Court said must be supposed (from the length of possession, etc.,) a title in full ownership.

It is certain that heretofore the completeness of a foreign title in Louisiana depended primarily upon its finality; in other words, upon the question whether or not it transferred full dominion. It was held that such a title was fully protected by the treaty, and needed no protection by means of a suit against the United States.

See U. S. *vs.* Reynes, 9 Howard, 127.
Lavergne *vs.* Elkins, 17 Louisiana, 220.
Murdock *vs.* Gurley, 5 Rob. (La.,) 457.
Am. State Papers, Pub. Lands, Duff Green's Edition, vol. 5, page 704.

Many such titles in Louisiana, some in the city of New Orleans itself, still remain unsued upon, and not in any formal way recognized by the United States authorities.

The act of 1860, was the first that ever allowed suit upon such a title.

And that act refuses jurisdiction where it is shown that the claimants have been in possession during the twenty years prior to suit brought. And when the act of 1860 allows jurisdiction, it is upon the theory that the titles having been left unrecognized by the United States, Congress and the General Land Office many have disposed of the land, or most of it, to third persons, and for all the land so disposed of, the act gives compensation in land scrip or certificates of location, locatable upon any public lands of the United States subject to private entry at $1.25 per acre.

Until the act of 1860, jurisdiction in the courts over Louisiana titles in suits against the United States was confined to inchoate, incomplete titles, such as grants by the commandant of a post or a lieutenant governor, and which had not received the final sanction of the Governor General.

See United States *vs.* Davenport's Heirs, 15 How., 1.

We transcribe the syllabus of that case:

"Two grants of land in the country known as the neutral territory, lying between the Sabine river and the Arroyo

Hondo, confirmed, namely, one for La Nana, granted in 1798, and the other for Los Ormegas, granted in 1795.

"These grants were made by the commandant of the Spanish post of Nacogdoches, who, at that time had power to make inchoate grants.

"In both cases the grants had defined metes and bounds, and the grantees were placed in possession by a public officer, and exercised many acts of ownership.

"The evidence of the grants was copies made by the commandant of the post, and also copies made by the land office in Texas. These copies, under the circumstances, are sufficient.

"At the date of these grants it was necessary to obtain the *ratification of the civil and military governor* before the title became perfected. *This not having been done in the present case, the title was imperfect*, although the petition alleges it was perfect, and the district court had jurisdiction under the acts of 1824 and 1844.

"But the district court ought not to have decreed that floats should issue where the United States had sold portions of the land, because these vendees were not made parties to the proceedings."

Now, when our case was here before, this Court said, as to our title, by confirmation:

"These acts of O'Reilley and Unzaga have been urged as a confirmation by the Spanish government, *pro tanto*, of the French grant to Duvernay; and it may be admitted that *they are entitled to great weight in that aspect of the case.* But this view cannot avail the petitioners here, as the effect would be simply the confirmation *of a complete and perfect title*, which we have seen cannot be dealt with under this act of 1844. *The title thus confirmed must necessarily partake of the nature of the one derived under the French concession or grant.*"

Words cannot more plainly declare, that the Court has not jurisdiction of the complete title by confirmation; and which, the opinion says, is one that presents itself with great weight.

It goes on, however, to discuss an imperfect, inchoate, and incomplete title.

What is this title? It evidently consists merely of an approved survey. Unzaga's letter is taken to be merely an approval of the survey made by Andry. Certainly, this is no title complete in form. It does not, in its terms, purport or pretend to be a grant. Considered without reference to the grant, it confirms; (and so only could the court consider it;) it was a mere approval of the survey; in other words, not a final and complete grant.

And the Court held that it gave title only to a depth of forty arpens, which depth we had surrendered to Galvez.

And here the question occurs, whether this judgment under the act of 1844, (June 17, 1844, 5 Stat. L., 676,) upon a title consisting of the approval of a survey, cuts off the present jurisdiction, under the act of June 22, 1860, over a title consisting of a confirmation by the Spanish authorities of a French grant of 1717—a title which the Court, in the plainest possible language, declined to assume jurisdiction of.

We do not believe that the lower court took any such view as that.

We close our discussion of this point, by respectfully submitting the following observations about the act of 1860:

1. That act confers new rights. It validates grants previously bad—for instance, the Morales grants in West Florida, (U. S. *vs.* Lynde, 11 Wall., 632,) and the French grants in Louisiana subsequent to 1762, (U. S. *vs.* D'Auterive, 10 How., 609.) All such grants had been rejected by this Court, but under the act of 1860 have been confirmed. And moreover, it is the first act that gave the right to sue the United States upon a complete Louisiana title, and

thereon to recover compensation for land disposed of by the United States. Up to the passage of the act of 1860 such titles were considered to need no protection but the treaty, and were therefore held not to be within the mischief of the act of 1844.

U. S. *vs.* Reynes, 9 How., 127.

2. The act of 1860 establishes new rules of evidence.

Its seventh section provides that the facts found by boards of commissioners shall be taken as true, *prima facie.*

3. It furnishes a new relief by allowing compensation for land disposed of by the United States, and without obliging the claimant to make the vendees or donees of the United States parties to his suit.

And finally, this act does not anywhere provide an exclusion from the jurisdiction of any claim merely because it has already been once rejected by the courts in a suit against the United States.

The 11th section does exclude the jurisdiction in the cases alluded to in the proviso of section 3, as follows, (Scull *vs.* U. S., 98 U. S. Rep., 410.) :

> * * * "*Provided*, That in no case shall such commissioners embrace in said classes, *number one* and *number two*, any claim which has heretofore been presented for confirmation before any board of commissioners, or other public officers, acting under authority of Congress, and rejected as being fraudulent, or procured or maintained by fraudulent or improper means; nor shall any such claim be received or considered by the commissioners which has been already *twice* rejected on the merits by previous boards."

This is the only rule of exclusion expressed in the act on account of any previous action of any sort of tribunal. It seems to be a case for the application of the maxim, *Exclusio unius.*

Our own conviction is, that the intention and effect of the 11th section of the act of 1860 is to give a new chance to obtain the right—a new trial, in short—to all claims that had not already been *confirmed*, except such claims as bore the stigma declared in the above proviso. Almost every one of the claims that could be embraced in that section had already been before the courts and rejected on grounds and theories that Congress finally came to look upon as harsh and unjust; and the act provides the most efficient of safeguards in commanding the law officers of the United States to appeal to the Supreme Court from every adverse judgment.

The next question we propose to discuss is: If this Court has jurisdiction, is there anything in the previous judgment, considered as *authority*, that should be allowed to crush our case?

In the first place, we point out that—having learned a lesson by our previous fate—we have introduced into the present record a great deal of new, and, in part, all-important evidence.

All the evidence from page 17 to page 37 of the Record is new. The deposition of the surveyor, Phelps, is a complete treatise, by a most competent authority, upon the mode and practice of making grants and surveys and plats of surveys upon the banks of the Mississippi. The Court had nothing of this kind before it at the previous hearing, and it is impossible to avoid seeing that the absence of the knowledge now furnished was disastrous to the claimant. But more and most of all, we found, and the United States not questioning its authenticity, filed in the court below the original plat of Andry's survey, and by stipulation (Rec., 174) it has been sent up to the Clerk's Office here, and a photolithographic copy of it is annexed to the printed record. The merest glance at this original plat or its photolithographic copy will show the Court how signally the opinion in 15 Howard erred in supposing that Andry had drawn upon his plat any rear line of the tract surveyed by him; and no one who peruses the opinion can avoid seeing how calamitous this error was to the claimants.

The opinion supposes a flat contradiction between the plat of survey and the meaning attributed by claimant, to the letter of Unzaga to Dauterive; whereas the Court now sees there is no contradiction whatever, not a particle. The Court was not then informed that the Spanish surveyors seldom, if ever, drew on their plats the rear line of their surveys, and it thought it had before it the evidence that Andry did draw it in this case; and, so thinking, the only wonder is that it had the patience to discuss any farther the question of the depth of the grant.

And, nevertheless, the Court must have felt very keenly the force of the evidence on that point, contained in the process-verbal of Andry, and the letter of Unzaga to Dauterive, and showing that the depth was to the Atcafalaya, for it devotes great acuteness and many pages to the struggle with it.

However, even so deficiently as the case was then presented, it would seem very clear, that if the Court had been at liberty to consider our title in the aspect of a perfect title arising from a confirmation by the Spanish authorities, its judgment must have been favorable to the claimants. For the opinion admits, in so many words, that "in that aspect of the case" the acts of the Spanish authorities "are entitled to great weight;" but goes on to say, without taking breath, that the Court has not jurisdiction to consider the claim in that aspect.

And as the opinion was finally delivered, it was that of the barest possible majority of the Court, four justices protesting against the expression of an opinion upon any question of fact or law, even upon the title as standing solely upon the approved survey.

The brief for appellee does not insist upon many of the points raised by the answer in the district court, but as this case is not to be argued orally, we desire to leave no point uncovered, and therefore go on to answer *seriatim* every point in the answer. We do not think we ought to be charged with cruelty to the Court, for we spare it the oral argument which would be much more tedious than briefs, where repetitions can be *skipped*.

The first defense in the answer is, that the survey was not sufficient to separate the tract claimed from the mass of the public domain.

We answer this, by showing a survey and process-verbal, full, formal, and in exact accordance with the customs and practice of the times.

To complete the side lines nothing was left to be done, except to prolong them straight to the rear boundary, viz., the Atchafalaya river. Such prolongation was a mere mechanical operation upon the plan. The starting points, openings and courses of these side lines were unmistakeably fixed by the Spanish surveys of the grants to Dauterive, and to Dorval and Delpino, his immediately contiguous lower and upper neighbors. The lines of Dorval and Delpino have been run again by the United States surveyors, and their tracts set down upon the approved United States township plat of Township 10 S., R. 13 E., and T. 9 S., R. 13 E.

The course of Dauterive's upper line is fixed with unusual means of certainty, because it is identical for forty arpens back from the Mississippi with Delpino's lower line, which latter line is parallel with the upper line of the same tract, the Delpino tract.

The fact of Delpino's upper and lower lines being parallel with each other is an unusual circumstance, because, as the deposition (Rec., 18) of Mr. Phelps shows, the side lines of grants upon the Mississippi, were, in a great majority of cases, either converging or diverging, a result following from the attempt to make the side lines of such grants start at right angles to the general course of such part of that tortuous, and then wood covered, river bank, as might be in view from the starting points. Hence, as a guide in fixing the *opening* and *course* of Dauterive's upper line, we have not only Andry's exhibition of Delpino's lower line, (identical for forty arpens back with Dauterive's upper line,) but also the fact that this lower line of the Delpino grant is parallel with its upper line. Thus the opening and course of Dauterive's upper line is fixed, not only by the Dauterive survey and the survey of Delpino's lower line, but likewise by the survey of Delpino's upper line. That the two side lines of the Delpino's survey are parallel will appear by a glance at the photographic copy of the plat thereof, which is the second one annexed to our first Brief. The lower side line is the bed of a creek described as dry except at high water. It is represented on the plat as parallel with the upper line, and in the centre of the plat are found these words: "6. Arpanes de frente con ambos limites paralelos"—"Six arpens in front with both boundary lines parallel."

In Andry's report of the Delpino survey, (Rec., 73, 74; Trans., 159,) he states he has surveyed for Vicente Delpino a tract of six arpens front, "which land borders on the upper part upon that of Blaz Brasseux, and on the lower upon that of Don Juan Antonio Bernardo Dauterive, from which last it is separated by a strait, which appears to extend in depth to the northeast, [should be northwest, the Spanish Rec., 74, being "noroeste,"] parallel to the line of the above limits, [should be, parallel to the upper boundary line; "parallelamente á la linia de los limites de arriba," Rec., 74,] and serves as a common boundary with the aforesaid Mr. Dauterive. The report continues further on: "Upon the line which is to separate Mr. Dauterive from the interested party no landmarks whatever have been placed, the channel of the bayou mentioned having been taken as a limit, which, for the said purpose, will serve as a common boundary between the two aforesaid estates," etc.

The Delpino survey was made prior to that for Dauterive. Delpino's tract was surveyed February 14, 1772, and Dauterive's March 12, 1772. In his report of the Dauterive survey, (Rec., 56, Trans., 143,) Andry states that Delpino is the immediate upper neighbor, and is established at the mouth of a bayou or strait which communicates with the Mississippi; that there was an agreement between Delpino and Dauterive that if it should thereafter be ascertained that the creek ran for the principal part of its course in the direction of north*west* [noro*este*] it should *remain* ["quedaria," Rec., 57, second paragraph] the common boundary between the respective tracts; but that if, on the contrary, it should run still lower down, that is, more to the west, [oeste,] it should be the sole property of Dauterive, in which case Delpino should be left to the northwest course * for his dividing line; that in the uncertainty as to how the creek did in fact run after reaching the swamp, no boundary posts were placed on this line, the creek being taken to be the dividing line through its whole course, until its course further back should be ascertained. In other words, the course of the division between Delpino and Dauterive, was to be what the course of the dry creek was as it, the creek, left the river, and the agreement related solely to the ownership of so much of the creek as might be subsequently ascertained to diverge from its early course and incline more to the northwest.

The bayou had been established as the dividing line by the Delpino survey, and it was left so by the Dauterive survey.

This creek ran parallel with Delpino's upper line; and when the United States surveyors surveyed the Delpino tract, after its confirmation by the United States, they were ordered and bound to run its two side lines in accordance with the Spanish survey.

---

* "Rumbo," (Rec. 57.) "Rhum. Point of the Compass"—*i. e.*, course.

The United States surveyors, in resurveying confirmed private land claims, were "instructed by their superiors in all cases to conform to the original mode, as far as it could be known and was possible."

See deposition of Phelps, (Record, 18, bottom.)

See also Report of the Commissioner of the General Land Office for 1869.

Page 46: "Foreign titles, French, Spanish, British and American."

Page 46: The policy of the United States, in the adjustment of such titles, has been one of unexampled liberality, securing to parties the lands to which they claimed titles from the lawful authorities of governments which once held sovereignty over territory now within the limits of the republic."

Page 47: "*The surveys of all such titles are in strict accordance in measurement, form and extent, with the land system of the Government from which the titles are claimed*, and are incorporated with the United States rectangular method, preventing as it were mosaic irregularities in connection with our rectangular surveys."

And there could certainly be no difficulty in following the Spanish surveys in this case.

The Delpino tract, as surveyed by the United States, is laid down on the township plat of T. 10 S., R. 13 E., as lot or section 48.

A glance at plan G, filed by the defendants in this suit, will show that lot or section 48—which is the Delpino lot contiguous to our upper line, and which was confirmed to Joseph Hébert—is represented with its two side lines parallel to each other. This plan G is certified to by O. H. Brewster, Surveyor General for Louisiana, as "prepared from the approved township plats on file in this office, except the lines which were placed to represent the claim of J. B. Dauterive." Our upper line is identical for a certain distance back with the lower line of lot or section 48, and the two side lines of section 48 are parallel to each other.

The fact that Hébert's lower side line was the creek or little bayou, and that the latter ran parallel with Hébert's upper side line, is shown too by the certificate of survey made in 1805, (Rec., 75, 76, Trans., 160–162,) for Charles Braud. The certificate states that Hébert was required to present his plan of the survey by Andry, and that the above facts appeared therefrom.

We have procured a copy certified by O. H. Brewster, Surveyor General of the United States for Louisiana, of the field notes, and plat of the re-survey of the Delpino tract as confirmed to Joseph Hébert. We append to the brief a photographic copy thereof. A glance thereat will show still further that the side lines are exactly parallel.

The immediate lower neighbor of Dauterive was Antonio Maria Dorval. Dorval's survey (Record, 129, Trans., pp. 57, 58, of our first brief,) was made March 12, 1772, on the same day as Dauterive's. The report of Dorval's survey is in many places worn out and illegible, but enough is left to show that Dorval's upper line was the boundary between him and Dauterive, and that stakes were planted on this line. A copy of Andry's plat of this survey is the last of the copies annexed to our first brief.

The Dorval claim has also been confirmed, and it is laid down on the township plat of T. 10 S., R. 13 E., as lot or section 34.

The Delpino and Dorval tracts were surveyed by Andry in 1772, and were granted in 1774. (Rec., 72, Trans., 158.) They were grants made under O'Reilly's regulations.

The United States filed Andry's original plan of the Dauterive survey without translating the Spanish words found on its face. Such a translation is not essential, for the translation of the process-verbal is enough. Nevertheless, we here translate the Spanish on the face of the plat, lest the absence of a translation should be supposed to leave some obscurity about the intention of the plan, and particularly in order that the Court may see that it distinctly refers in three places to the certificate (process-verbal) which follows it. It refers to the process-verbal for a further explanation of itself—*i. e.*, the plan—so that when Unzaga approved the survey according to the plan, he must have referred to the plan as explained by the process-verbal, which formed a part of it and was referred to in and by it.

We commence our translation at the upper right-hand corner:

"Louisiana. Right bank of the river; Vicente Delpino, 6 arpens.

"Bayou or creek which separates the land of the interested party from that of Vicente Delpino, under the conditions expressed in the certificate [process-verbal] which follows.

"Lands of Dr. Juan Antonio Bernardo Dauterive, situated in the bend of the Bayagoulas, and measured and surveyed March 12, 1772, 44 arpens 2 toises in front upon the river, opening and widening themselves by 90 degrees towards the depth."

"Another tract of twenty arpens, conceded provisionally to the interested party by his Excellency Governor General Dn. Luis de Unzaga y Amezaga, contiguous to and higher up than the concession allowed by Dn. Alex. O'Reilly, which tract likewise opens by twenty degrees towards the depth, 20 arpens."

"Line which would separate the two concessions if they were lands of different persons. It runs north 65 degrees west, taking note that no stakes have been placed on this line because both the tracts belong to the same owner."

"Tract of 20 arpens front conceded to the interested party by his Excellency the Most Excellent Count O'Reilly, to which quantity there have been added for the reasons stated in the certificate [process-verbal,] which follows, four arpens and two toises more, which from one of the dotted lines to the other open by twenty degrees towards the rear. 24 arpens 2 toises."

"Line which was to have been the boundary between the land of the interested party from that of Antonio Maria Dorval, and which runs north 85 degrees west, notice being taking that for the reasons stated in the certificate [process-verbal,] which accompanies, a different course has been given it by depressing it fifty degrees, so as to give it the course of southwest, which is the course of the black line drawn to abut upon the said Dorval."

"Triangle of fifty degrees of opening, which results in favor of the interested party by the depression of the black line, which ————————, and on which stakes have been planted."

"Boundary line between the lands of Dn. J. A. Bernardo Dauterive and those of Antonio Maria Dorval, running into the woodland southwest, in order to follow the course of the road made through the woods by the said Mr. Dauterive, in order to penetrate to the river Atchafalaya, and to his stock farm in the region of the Attakapas."

"Anto Maria Dorval, 10 arpens."

"River Sn. Luis—or Misisipe."

The courses of Andry's survey are all magnetic; all his surveys are so made, but the resurvey by the United States surveyors of Delpino's tract confirmed to Hébert are according to the true meridian, the variation of the needle from the true meridian being ascertained and allowed for.

The road ran to the Atchafalaya. If Dauterive had been deprived of its end upon the Atchafalaya, that end might have been at any moment granted to some one else, and Dauterive prevented from making the very use of it for which he constructed it.

The process-verbal of Dauterive's survey (Rec., 59; Trans., 143–145) is exceedingly full and complete.

Andry says:

> "I went to the lands of Don John Antonio Bernardo Dauterive, situated in the district of Iberville, upon the right bank of the river Mississippi, in the bend of the Bayagoulas, in order to survey, in his behalf, the twenty arpens of land fronting on the aforesaid river, to which *his former possession* in the aforesaid locality had been *reduced* by His Excellency the Most Excellent Count O'Reilly; and also the twenty other arpens, which, by a posterior grant of His Excellency, the Governor-General of this province of Louisiana, Don Luis Unzaga y Amezaga, had been provisionally conceded to him," etc.

He then states in great detail his mode of proceeding to establish the boundary lines. He commences at the upper boundary line; that is, at the terminal line of the adjoining claim of Delpino, who was established at the mouth of a strait or bayou. The course of this bayou as far as it was visible had already been determined during the survey of the Delpino grant, in the previous month, to be north 45° west, magnetic—*i. e.*, northwest. It was agreed between Delpino and Dauterive that the course of the bayou in the unexplored woodlands to the rear should be regarded as the dividing line until future clearings made it possible to survey said bayou; then, if the bayou was found to be west of a northwest line, the said bayou should belong solely to Dauterive, as it would then run in its rear course entirely upon his land, and the two parties should in such case be bounded by the said northwest course, as at the mouth of the bayou.

This upper boundary or side line being definitely settled, Andry finds that, owing to the nature of the land, he must measure the grants of Unzaga and of O'Reilly as separate tracts. He must give to each side line its proper course, which, as a rule, was to be perpendicular to the course of the river. Owing to the frequent bends in the river, he determines to average its course. The first grant below with established lines he finds to be that of Luis Tousson, which was ninety arpens distant from the Delpino grant or upper boundary line of Dauterive, and thus at a point much below Dauterive's grant, and also below the adjoining grant of Dorval. This Dorval seems to have been occupying his grant, but his lines were to be definitely established on the same day as Dauterive's lines, his survey being dated the same day as Dauterive's.

Within this distance of ninety arpens between the surveyed grants of Delpino and Tousson, Andry finds the bend of the river to be 90 degrees. This gives an average of one degree of divergence for each arpent of frontage, and therefore 20 degrees of divergence for the frontage of each grant of twenty arpens. Consequently Andry gives the lower line of Unzaga's grant (which was the upper one of the two) a divergence of 20 degrees from its upper line (the bayou), making its course 65° west, (see plan,) and he gives to the lower line of the O'Reilly grant an additional divergence of 20 degrees for its additional frontage of twenty arpens, giving this lower line therefore a course of 85° west, (see plan,) or a total divergence of 40 degrees from the bayou or upper boundary line of Dauterive's grant.

At this stage he says he reached the point C, where ended the forty arpens front, which he had set out to measure. But Dauterive represented to him that if he were restricted to this frontage of forty arpens only, he would be deprived "not only of the most advantageous piece of his clearings and fields, but also of a considerable portion of his establishments and buildings, and also of a great part of his fences and parks, which extended about four [arpens] lower down." Andry continues, that, supposing Unzaga could not have intended this injury to Dauterive; and because no injury could result to Dorval, the nearest neighbor below, who had located himself at the extremity of the clearings, and whose frontage was not diminished thereby, he, Andry, "with the proviso of the ratification of his Excellency, continued his measurement down to the point where Dauterive's clearings terminated, thus adding four arpens and two fathoms to Dauterive's forty arpens front." At this point he drew the line, Q. R. S., perpendicular to the river and parallel to the course of the line last determined. But he found that, by restricting Dauterive to this line as his lower boundary, he, Dauterive, would be deprived "of the little triangle of his clearings comprised between the aforesaid dotted Q. R. and the black line Q. T. U. V., which follows it; besides which he lost, also, by the said line *the road of four leagues in extent, made by him in order to penetrate through the woodland and cypress swamp*, to go to the Atchafalaya, and take his cattle from his pens or folds on the side of the Attakapas." Andry considered this as contrary to the intention of His Excellency, who had made use of said road (known by the name of the Portage of Mr. Dauterive) in order to transmit his orders and other communications to the Attakapas and Opelousas, and proceeded to ascertain the direction in which the road ran, and the character of the land in said triangle. He found the land to be marshy, overflowed, and useless to any one. The apex of the triangle was upon the river bank, and thus no frontage was gained by Dauterive, or could be lost by others. The road formed the lower side of the triangle. Its course is given as southwest, and it was therefore parallel to the aforementioned line of Luis Tousson. For the reasons given, Andry concludes that this triangular piece of land should be given to Dauterive, and that his grant should be bounded by the said road. And he so arranged it, giving Dauterive, as his lower boundary, the line T. U. V., and placing on that line two stakes, T and U, one stake, T, at thirty-one toises distance from the bank of the river, and the second, U, at thirty-one toises still further back.

The course of the upper boundary line of the Dauterive grant is certified:

1. By the direct statement that its course was northwest—*i. e.*, N. 45° W., [magnetic.]

2. By the statement that it was parallel to the upper line of the Delpino grant, which was northwest.

3. By making the course of this line a fixed point of departure for all others given: (a,) by adding 20 degrees to this course for the course of the next boundary line, which is given as being 65 degrees west of north; (b,) by adding 40 degrees as before to make the course of the provisional boundary line of the O'Reilly grant, which is thus given a course of 85 degrees west of north; (c,) by adding to the said divergence of 40 degrees the included angle of the triangle (50 degrees) to give the course of the road, which course is stated to be southwest, or 90 degrees (40° + 50°) from the initial point; (d,) by repeating the statement that said road (making 90 degrees with said upper boundary line) was parallel to the course of the boundary line of Tousson, and which therefore must be, and was so stated at first as being 90 degrees from said upper boundary line.

4. By the corroborative testimony given to the process-verbal by the plan (marked B,) of which indeed the process-verbal is distinctly made a part by Andry.

5. By the resurvey of the lines of the Delpino grant by United States surveyors, who give the same course as above given, though corrected for magnetic variation.

From this process-verbal of Andry, it results:

1. That prior to the advent of O'Reilly (which was in 1769) Dauterive had possessed a tract of land at this locality.

2. That O'Reilly had reduced his frontage to twenty arpens.

3. That Unzaga had consented to allow him an additional frontage of twenty arpens.

4. That Andry surveyed for him there forty arpens front, and also (subject to the approbation of the governor) a front of four arpens and two fathoms (toises) additional.

5. That Dauterive had made a road of four leagues in length from the Mississippi to the Atchafalaya river.

6. That Andry had concluded that Dauterive should be bounded upon this road.

7. That Dorval was not injured thereby.

We submit that Andry meant that Dauterive ought to be bounded upon the whole length of this road, and that, as the road ran to the Atchafalaya, Dauterive's lower line ran just as far.

As is shown in our first brief, Dauterive's French title went back to the Atchafalaya, and the road he had made was upon his own land. His extent in the rear had not been interfered with; only his frontage had been reduced. Andry and Unzaga knew these facts, and, as appears from Andry's subsequent report to Unzaga and the letter of the latter to Dauterive, (Rec., 59, Translation; Rec., 52, and pages 19 and 20 of our first brief,) there was no intention of depriving him of his depth to the Atchafalaya, and Unzaga confirmed his holding under the French title with a depth to the Atchafalaya, *but with a reduced frontage.*

If Dauterive had not been allowed to retain the ownership of the Atchafalaya end of his road, this part of it might, at any moment, have been granted away from him, and then the whole motive and purpose of Andry in depressing his lower side line, would have been rendered ineffectual. And such would also have been the case, with Unzaga's intention in approving the action of Andry.

The authenticity of Unzaga's letter is proved by the testimony of Cruzat. (Rec., 127.) No doubt appears to have ever been cast upon it. The Board of Commissioners who had this claim before them had no doubt about it, and no contest has ever been raised about it. Unzaga addresses himself to Dauterive under date of July 12, 1772, and recites verbatim a report to himself from Andry of the date of March 28, 1772. This second report of Andry was a thing to be looked for, since in his process-verbal of the survey he, Andry, had stated that he had surveyed for Dauterive a greater frontage than he had been directed to survey, but that he had done this subject to the approbation of the governor. In this report thus addressed to the governor, Andry says he has bounded Dauterive upon the road as far the river Atchafalaya, "as was heretofore the case," (como antes pasado.) Now, here Andry declares in the plainest language just what might have been understood from the language of his process-verbal, viz., that he had bounded Dauterive upon the road as far as the Atcahafalya; that is, upon the whole length of the road; and he says, too, that this was "as was heretofore the case." What is it that was heretofore the case? What else but that Dauterive's line had theretofore run back as far as the Atchafalaya? And the witness Degruys, who had the best opportunity for knowing, swears positively that the French grant did run back to the Atchafalaya. (Rec., 68–71; Trans., 154–157.)

The French grant was one of a dozen or more large grants made to induce men of wealth to embark their means in settling up the province of Louisiana. The grant was made prior to 1718, at a time when the whole population of the province was only seven hundred. (See French's Historical Collections of Louisiana, vol. 3, p. 49. This volume contains a translation of De la Harpe's Historical Journal of the Establishment of the French in Louisiana.) (See also Martin's History of Louisiana, vol. 1, p. 197.) The grantee, Paris Duvernay, transported sixty colonists to the grant in

1718. (See French's Historical Collections, vol. 3, page 59.) This was the first accession to the population of the colony produced by the new system of large grants. (Martin, vol. 1, p. 206.)

The answer suggests that the grant was called the Bayou Goula concession, and infers that it took the name from the bayou. This is an error. It was called the Bayagoulas concession, because it was located near a village of the Bayagoulas Indians. (See French, vol. 3, p. 59 and note.) The grant was settled upon, occupied and worked from 1718 to the death of Dauterive, in 1776, say fifty-eight years. All these circumstances are at least strongly confirmatory of the view that the grant must have been a very large one, and confirmatory of the meaning we attribute to the language of Andry and Unzaga. We can see no other meaning to be given this language.

But Unzaga, after reciting Andry's report, says that he approves Andry's survey "according to the plan." The plan shows no rear line at all. The rear line was the Atchafalaya, many miles off. But are not the field-notes (the process-verbal) of a survey an essential part thereof? From the field notes any draughtsman can construct a plan, and that is the way plats of survey generally are constructed. A plat of survey cannot be fully understood without the field notes. Andry's plat was connected with his process-verbal, and the two were one. Hence, when Unzaga tells Dauterive that he approves Andry's survey according to the plan—a plan which shows no depth at all—he must, in all decency and reason, be understood as approving the survey according to the plan as explained by the process-verbal. And the process-verbal explains that the lower side line of Dauterive's survey, exhibited upon the plat to only a very small distance, and upon which only two stakes were planted, and at a very short distance from the Mississippi; that this lower side line ran the whole length of Dauterive's road to the Atchafalaya.

Unzaga's letter to Dauterive is not a "titulo en forma," a "title in form." There are in the record a number of grants issued by Unzaga, and complete in form, and their form is quite different from that of Unzaga's letter. And why was this? Very clearly because no *original* grant was intended to be made by Unzaga to Dauterive, but Unzaga's action was a *confirmation of a pre-existing French title.*

But Unzaga's letter was the instrument that conveyed the confirmation. A confirmation is of the nature of a grant, and Unzaga's confirmation is the only instrument in this record that has anything of the nature of a grant to Dauterive. The grant, under the French and Spanish Governments of Louisiana, was the document in which the depth of the grants was expressed. There is no indication in Unzaga's letter to Dauterive of any depth whatever, except the indication conveyed in the statement of Andry, adopted by the Governor, that the depth was, theretofore, (under the French title,) to the Atchafalaya, and that Dauterive had been by him bounded on his road, as far as the Atchafalaya. The defense contends that the depth was intended by O'Reilly and Unzaga to be reduced to forty arpens, which was the ordinary depth of grants to immigrants and new settlers. Besides what we have already said on that point, our answer is, that if Unzaga had so intended, he would have indicated that intention in his letter to Dauterive, which was the only instrument in the nature of a grant issued by him to Dauterive. There are in this Record eight complete and formal titles by French and Spanish Governors, with their translations, and in every one of them the depth is expressly declared in these granting instruments.

Page 25: Grant to Bienvenu, 60 arpens depth.

Page 30: Grant to Ducros, with a depth to Lake Barataria.

Page 37: Grant to Delaloire, with a depth to Lake Borgne.

Page 158: Grant to Delpino, "with the ordinary depth of forty."

Page 158: Grant to Dorval, "with the ordinary depth of forty."

Page 164: Grant to Juan Le Blanc, "with the ordinary depth of forty."

Pages 165–6: Grant to José Enry, "with the ordinary depth of forty."

Page 167: Grant to Joseph Le Blanc, "with the ordinary depth of forty."

We repeat that if Unzaga had had any intention of limiting Dauterive's depth to forty arpens, he would have said so, in his letter, in plain language, or at least have said something to qualify or detract from the apparent meaning of his action in adopting Andry's statement. But Unzaga gives no indication whatever of any depth except that to the Atchafalaya.

2. The second article of the defense is that neither under the French grant, nor under the confirmation thereof by Unzaga, did the depth extend to the Atchafalaya.

An answer to this is included in our answer to the first item of the defense.

The French grant was made by the Western Company, whose policy it was to make very large grants to wealthy and prominent men, that they might be induced to lay out large sums in colonizing the country. An abstract of the provisions of the charter of the company, is given by Martin, volume 1, 198–202.

The policy of the company was exceedingly successful. Martin says, (vol. 1, p. 290:)

> "It cannot, however, be denied, that while Louisiana was part of the dominions of France, it never prospered but during the fourteen years of the company's privilege."

The grant to Duverney was in full property. This Court said, upon that point: (14 Howard, 24.)

> "For, although we are not able to speak of the nature or the character of the title from the terms of the grant, in the absence of that instrument, all the evidence which has been furnished in relation to it leads to the conclusion that the full right of property passed to the original grantee. Even the length of possession which is relied on, lays a foundation for the presumption of such a grant, and cannot therefore avail the petitioners here."

At the date of the grant the population numbered only seven hundred. Land could hardly be esteemed of more than nominal value. It is entirely improbable that the French grant was ever surveyed. It is entirely probable that so large a grant must have been made by some designated and prominent landmarks. The Mississippi was such a land mark, and so was the Atchafalaya river. "Atchafalaya" is an Indian word, signifying "a long river." (See Martin, vol. 1, preliminary chapter, p. 55.) In that region rivers are the only prominent land marks. Thus every probability supports the declarations of Uñzaga, Andry and Degruys, that the French grant did extend back to the Atchafalaya. It had been occupied and cultivated more than fifty years when O'Reilly appeared in 1769, and Dauterive was then in possession.

Large as is the grant under the boundaries we claim, it was hardly more than a cabbage patch, compared with such grants as the British sovereigns made in the thirteen colonies—for instance, the grant to William Penn, of the tract now constituting the States of Pennsylvania and Delaware.

3. Next, defendants say, that, "it is an historical fact that all grants made by the *French* or Spanish authorities in Louisiana, fronting upon water courses, were, unless otherwise clearly expressed, intended and taken to be of what was the ordinary depth, viz: forty arpens." And in sup-

port of this assertion the answer refers to O'Reilly's regulations of February, 1770. And the answer refers to no authority at all to support this allegation as far as it relates to French grants. O'Reilly was a Spanish governor, and there never were any such regulations under the French.

And even under the Spaniards, and after O'Reilly's regulations, we have shown hereinabove, that when forty arpens was intended to be the depth, that intention was expressed in the grant, and in the plainest terms.

The assertion of defendants involves several errors, as we have shown in our first brief. O'Reilly's regulations did not provide that all grants fronting upon rivers should be limited to a depth of forty arpens. Those regulations applied only to grants to recent immigrants.

They had no application to confirmations of anterior French grants; and, moreover, they could not limit the power of the succeeding governor, Unzaga, who was as absolute as O'Reilly.

The succeeding observations of the answer, on page 10 of the Record, down to the last paragraph on that page, we have already replied to.

In the next place, defendants assert that "where the expressions used in the grants are such as to authorize an extension in depth beyond the ordinary forty arpens, and, without designating limit, it was the established custom, under the French and Spanish governments in Louisiana, to construe such grants as bounded in the rear by the first water course which the side lines in their extension beyond that depth might reach." And from these premises defendants draw the conclusion that our lower side line should stop at the Bayou Goula, and that our rear line should be a line drawn diagonally from the point where that lower side line strikes that bayou to a point on the Mississippi marked

"O," upon plan "A," of claimants, which point "O," defendants say is the point where our upper line would strike the Mississippi, if this upper line were extended beyond a depth of forty arpens.

This would make a tract of a most fantastic shape—it would give a constantly diminishing depth from the end of the lower side line on the Bayou Goula to the end of the upper side line on the Mississippi; and this depth at the point marked "O," would be reduced to a geometrical point. The answer points out no warrant for this proposition, and there is certainly no warrant for it in human sense. We venture to say, that it never entered the head of any French or Spanish authority of Louisiana to make a grant of such a shape, and the defendants show no instance of any such grant.

Following this proposition in the answer (which appears to be a Brief as well) are various observations, which we will notice as soon as we come to a general dissection of this portion of the answer. But the answer goes on to say, that if its observations respecting our upper line crossing the Mississippi, and thus giving us two fronts, are attempted to be answered (as in fact they are answered) by pointing out that the "Mississippi, by long abrasion of its banks, has finally reached and passed the upper side line which at the time of the location of the grant was far distant from it; defendants say, if that be true, the first water course, according to said Plan A., which said side line, in its extension beyond forty arpens in depth, would reach, would be Bayou Plaquemine: and a line from that point to the point of intersection of the lower side line with Bayou Goula, would form the boundary of the grant."

Here a new proposition is introduced, viz., that our lower side line stops on the Bayou Goula and our upper side line on another Bayou, viz., the Plaquemine.

But what warrant is there for this proposition? Is there anything in the historical evidence of the French grant, anything in Andry's survey, anything in his process-verbal, anything in his second report addressed to Unzaga, anything in Unzaga's letter to Dauterive, anything in sense, common or otherwise, to sustain this proposition? The defense points out no instance whatever of such a grant. The office of the United States district attorney for Louisiana is in the same building as the Consolidated Land Office of the United States for Louisiana. In this land office are all the evidences procurable of the terms of French or Spanish grants in Louisiana. If any instance were procurable of a French or Spanish grant on the Mississippi with one side line stopping on Bayou A and the other side line stopping on Bayou B, nothing would have been easier than to have sent up stairs and to have procured evidence of a grant of that form, and to have filed it in this case. Nothing of the kind has been done. We never heard of such a grant ourselves, nor can we find anybody else who ever did. This proposition strikes us as one of those wild propositions thrown out at random and at venture, to which the only reasonable answer is the question—"Where is the proof of what you say?" And to this question no answer is given here.

And now to probe the foundation of this proposition. The answer states, (Rec., 10, last paragraph,) that it was the established custom under the French and Spanish governments in Louisiana to construe such grants as were more than forty arpens deep, and where the rear line was not defined, as bounded in the rear by the first water-course.

We say there was no such custom. The witness Phelps swears that the granting instrument always stated what the depth was to be, whether to a lake, a bayou, a river, or of a stated number of arpens, and we have pointed out that the witness is sustained by the terms of all the grants set out in the record.

If the granting instrument used such an expression as "all the depth," then very likely the depth was intended to be to the first water-course. But in such a case both side lines must have run to that same water-course, unless there was a different intention expressed in the granting instrument itself.

All this seems to us a mere exercise of the imagination as to what might, could, or should have been.

The foregoing propositions of defendants are said to be true whenever the grant was of more than forty arpens depth and the rear boundary was not declared. We say that they were never true in any case, and that our title-papers do designate the rear boundary.

We come now to the allegations of the answer, amounting in substance to this, viz:

That, as our plan A exhibits our upper side line, it runs across the Mississippi, thus giving us two fronts upon that river; and to the further allegation that this upper line, as we represent it upon plan A, approaches in several points within twenty arpens or less of the Mississippi.

Now the Court is perfectly well aware, as a matter of common knowledge, that the Mississippi river is constantly eating away its bank here, and adding to it there. Degruys swears that the water front "crumbled away considerably. Andry's survey of Dauterive's land was made more than a hundred years ago. A line which, a hundred years ago, might have run very far from the river, might now be very near the water, because of the caving in of the banks and the consequent approach of the water. Nobody can pretend to know exactly what incursion the river may have made during the last hundred years at these particular spots; all that we or anybody else can do, is to give a general description of the action of the Mississippi upon its banks, and this we will now do, from the best authorities we have been able to find.

Brackenridge says, Views of Louisiana, Pittsburg, 1814, pp. 42, 43:

" The falling in of the banks is amongst the most remarkable features of this river, [the Mississippi.] Sometimes whole acres with the trees growing on them are precipitated into the stream, creating frightful impediments to the navigation, and not unfrequently overthrowing boats moored to the shore."

Stoddard's Louisiana, page 373 :

" As the Missouri and Mississippi are extremely winding, the current is forced from one point of land to another, or rather from each successive point into each successive bend on the opposite side of the river. The greatest proportion of the water rushes into the bends, where also the channel winds it way, and where the current is always much more rapid than in any other part of the river."

Reclus says, (" The Earth," translated by Woodward, New York, 1873 :)

Page 337 : " The whole of the embankments of the Mississippi must, altogether, reach a total length of at least 2,500 miles.

" It is true, that in many of these imposing ramparts there is still much to be wished for in respect to solidity.

" Every great flood on the Mississippi which has been recorded, has formed one or more breaches in the embankments above New Orleans. The water then rushes like a cataract into the plains which extend below its level, to a depth of ten, twelve, and even fifteen feet. It rapidly enlarges the opening by washing down the dikes for an extent of one or more miles, and then, digging deep into the soil, *hollows out for itself a new bed across the plantations.* One of these temporary beds which the river made in 1850, 1859, and 1862, near the hamlet of Bonnet Carré, discharged no less than 3,930 cubic yards of water a second—that is, a sixth of the average liquid mass of the Mississippi. If the inhabitants had not succeeded in stopping it up on each occasion, the new river would, without doubt, have gradually become one of the branches of the delta of the Mississippi."

On page 311 will be found a diagram exhibiting in a very striking way the changes the Mississippi makes in its channels.

On page 309 it is said, speaking of rivers in general: "But the mass of the current does not confine itself to merely striking against the two banks in turn; it also continuously wears them away, and modifies their outline. When the water dashes against the bank with the impetus which is communicated to it by the current and the action of centrifugal force, it tears away the earth, dissolves some of the solid particles, washes away the sand, and has a constant tendency to penetrate farther," etc.

A glance at plan A will show that the point where our upper line *now* crosses the Mississippi, is one of the very sharpest bends in the whole river.

The defence filed in evidence an affidavit of Louis Palms, (Record, 172,) to the effect that the original grant to Duverney, of four leagues front on the Mississippi, would, "*if commenced at the lower boundary line laid down on said Plan A*, terminate at the point marked L. P., etc. But there is no warrant whatever for concluding that the lower line of our French grant did commence there. Probably no survey of the French grant ever was made, and we do not know the starting points, or the openings or the courses of the side lines of the French grant.

The idea of this part of the answer seems to spring from a misconception of the meaning of Andry in using the words "I have bounded him on the road and its adjoining lines as far as the Atchafalaya, (*as was heretofore the case*.") We say these words, "as far as the Atchafalaya, (as was heretofore the case,") mean that the rear boundary under the French grant was the Atchafalaya river, and the witness Degruys swears that this was the case. But defendants go farther, and, *for the purposes of this part of their defense*, take the whole phrase to mean not only that the rear boundary was the Atchafalaya, but that the road was the extreme lower line of the French grant. We cannot say that this is impossible, for the starting points of the side lines of the French grant are not known. But it is almost incredible, for there is not one chance in a thousand that a man holding a tract on the Mississippi of twelve miles front would locate such a road as Dauterive's road, of four leagues in length, upon one of the extreme *edges* of his tract. And it is much more reasonable to understand the words, "as was heretofore the case," as relating solely to the immediately preceding words, viz.: "as far as the Atchafalaya," particularly as the words ("as was heretofore the case") were placed by Andry between brackets, and thus in a measure cut off in his mind from all except the last preceding words, viz: "as far as the Atchafalaya." A surveyor cannot be expected to use language with the precision of a judge.

The next point in the answer relates to the opinion delivered by this Court at the hearing under the act of 1844.

It was this part of the defense which led the learned district judge to dismiss our petition. He made no written statement of his reasons, but we are informed that he said he did not feel at liberty to decide in favor of a claim which had already been rejected by the Supreme Court upon the merits.

We have discussed in our first brief the opinion reported in 15 How., p. 14, and have shown that that opinion declares in the plainest possible language, that the Court could not deal with the title as founded upon a confirmation by the Spanish authorities of an anterior French grant, because such a title was a complete one, of which the courts had not jurisdiction under the act of 1844.

And four justices took the trouble to state that they did not *understand* the opinion as *intended* to express any opinion upon the merits of the complete title, and that they thought the majority ought not to have expressed any opinion even upon the imperfect title resting merely upon the survey not followed by any title in form or complete patent, because they say, no claim under any such imperfect title had been set up. And these four justices conclude by protesting against the action of the majority in having expressed any opinion at all, even upon the imperfect title. They say they think the whole case should have been simply dismissed for want of jurisdiction, and no opinion expressed upon *any* question of fact or law.

But it is as clear as the sun, that the opinion of the majority did not pretend to deal with the title as consisting of a confirmation, by Unzaga, of the pre-existing French title.

It expressly disclaimed the jurisdiction to do so, on the ground that such a title was a complete one.

The opinion says, (15 Howard, p. 25:)

> "These acts of O'Reilly and Unzaga have been urged as a confirmation by the Spanish government, *pro tanto*, of the French grant to Duvernay, and it may be admitted that they are entitled to *great weight in that aspect of the case.* But this view cannot avail the petitioners here, as the effect would be simply the confirmation of a complete and perfect title, which we have seen cannot be dealt with under this act of 1844. The title thus confirmed must necessarily partake of the nature of the one derived under the French concession or grant."

Our claim here is founded entirely upon the French title, and its confirmation by the Spanish authorities, and nothing can be plainer than the fact that this Court has never passed upon the merits of such a claim.

In addition to what was said in our first brief in relation to the mistake of Justice Nelson, in supposing that Andry's plat of Dauterive's survey indicated a rear line, and in mistaking for such rear line one of the border lines put on by the draughtsman, who made the copy of that plat, we remark here that there were twelve plats in the transcript of the record on the former appeal, and that every one of the other eleven copies has around it a border precisely like that around the copy of Andry's plat of the Dauterive survey. Photolithographic copies of ten of these twelve plats are annexed to our first brief. The twelve plats are still in the manuscript transcript of the old record, in the clerk's office of the Supreme Court. This mistake of Justice Nelson could never have occurred if counsel for claimants had argued their case orally before the Court. But they appeared only by brief, and the cause of this is plain enough. The petition and the decree of the lower court had exhibited no title except a complete one. This case did not come to a hearing on the appeal until the December term, 1853, (15 Howard, 14;) while this Court had decided, more than two years before, at the January term, 1850, in the case of U. S. *vs.* Reynes, (9 Howard, 127,) that the courts had not jurisdiction, under the act of 1844, over claims upon complete titles. Counsel for Dauterive therefore took it for granted that the Supreme Court would, as a matter of course, simply reverse the decree, and order the lower court to dismiss their petition. They could not anticipate that the Supreme Court would discuss the evidence or the law of an imperfect title not presented by the petition or the decree. Their brief seems to have been prepared before they became aware of the Reynes opinion. It is nothing more than a mere index to the Record. After that opinion became known, they must have supposed they were not justified in troubling the court with an oral argument. As it turned out, however, they made a serious mistake, and may, perhaps, be considered to have deprived the court of an assistance to which it was entitled, seeing that though the petition and the decree of the lower court had not dealt with any imperfect title, the Judge of the the district court had, nevertheless, in his opinion, spoken of the title as being good, both as an imperfect one, and as a perfect and complete one. If the then counsel had had (after the Reynes decision appeared) any idea that their case would be treated of by the court upon the merits, they would certainly have appeared personally, or else have made their Brief as full and elaborate as our Briefs are. It could have done them no good to apply for a rehearing on the ground of the mistake as to border line of the copy of Andry's plat. The Court would have told them, that they could not obtain the depth to the Atchafalaya, (without which depth there was nothing in the case,) unless the acts of the Spanish authorities were considered in connection with the anterior French grant, and that these acts could not be so considered without a new act of Congress.

We believe that our two Briefs afford all the assistance to the Court that can be rendered by counsel. It would be impossible to add any additional assistance in an oral argument of two hours.

The answer next speaks of our surrender of forty arpens front, with a depth of forty arpens. We expressly excluded the land so surrendered from our claim before the Land Commissioners, before the courts, under the act of 1844, and in the present suit. The witness, Gascon, (Rec., 16,) in testifying as to the number of acres in our claim, *deducts* $2,350\frac{43}{104}$ acres, as the amount surrendered to Galvez. Galvez wanted this depth for the Acadian immigrants. He gave them that depth of land, as he would have done to any other new comers.

We, also, now deduct from our claim the $26,394\frac{37}{100}$ acres within our lines, which the French or Spanish authorities gave to others, by complete and incomplete titles, and which have been confirmed by the United States, and for which amount the answer says we ought not to receive compensation.

But it is absurd to set up that the grant to others of 4,671 acres by complete titles, and 21,723 acres by incomplete titles, was a repudiation of our title. The French and Spaniards had no surveys of their public domain. They only surveyed lands when they were granted. They had no Township plats (as the United States has) upon which it can be perceived at a glance what land is vacant. In the case of United States *vs.* Bouligny, No. 413, October term, 1877, where the title had been rejected by this Court under the act of 1844, (See U. S. *vs.* D'Auterive, 10 How., 609,) there were over seventy thousand acres that had been regranted in the same way. The United States district court for Louisiana simply deducted the amount so regranted from the amount claimed, and made a decree for the balance, viz., 135,757 acres. Both the United States and the claimants appealed, but the cross-appeal of claimants was never docketed by them, and the Supreme Court affirmed the decree as rendered below. In the present case only 4,671 acres were regranted by complete title. The other 21,723 acres, *colored blue upon the original plan A*, were confirmed by the United States "on claims founded on incomplete French or Spanish titles made anterior to the change of government, and claims which were occupied or possessed ten years previous to the 20th of December, 1803, or on which settlement has been made prior to the 1st day of October, 1800." (See certificate of U. S. Surveyor General, Louisiana, on the lithographed copy annexed to the Record, of Plan A.) Many of these claims were mere squatter claims, and many may have been founded on mere loose permits to settle issued by subordinate military officers like commandants of posts.

The balance of the answer consists of a plea that we should be decreed scrip or certificates of location only for so much of our land as the United States may have "sold," and should receive no compensation for so much of our land as the United States may have disposed of "otherwise" than by sale. But this defense is entirely exploded.

In United States *vs.* Watkins, 97 U. S., 219, this Court said, page 223:

> "As to the point made by the Government, that the lands in question were not sold by the United States to third parties, but were donated to settlers thereon, and that, therefore, the case does not come within the words of the act of 1860 granting to successful claimants other public lands in lieu of those claimed, we do not think that this objection is tenable. If the Government has disposed of the lands in any manner, we think the fair interpretation of the act is that the claimant should have other lands in lieu thereof. As we have so held in several cases, we do not deem it necessary to discuss the subject further. The act may well be construed alongside of other acts *in pari materia* where the words "sold or otherwise disposed of" are expressly used. They are all within the same mischief and the same reason."

CONCLUSION.

It would be a monstrous error to imagine that the Spaniards made a practice of repudiating the French titles they found in Louisiana. They even respected the grants made by the French subsequent to the treaty by which Louisiana was ceded to Spain, but before the Spaniards took possession. See Report of the Missouri Land Commissioners, Am. State Papers, Duff Green's edition, Vol. 5, p. 702, where it is said, (p. 703):

> "Every grant, as far as we have been able to ascertain, made by the French authorities prior to the treaty of Fontainebleau, in 1762, by which Spain acquired possession of Louisiana, and, indeed, all such as were made prior to the year 1767, the time when Spain was put in possession of the country, were subsequently recognized by the Spanish authorities."

So, also, it was said by the supreme court of Louisiana, in Devall *vs.* Chopin, 15 Louisiana Rep., 566:

> "It is historically known that the Spanish Government never contested the grants by French officers before the

Spaniards took possession of Louisiana, and this action of Spain is a tacit ratification."

Here was a French grant of 1717, which had been occupied and cultivated for more than fifty years, at the cost of a vast outlay. There is no warrant, from anything known of the disposition of the Spanish authorities in Louisiana, for a surmise that they intended to cut down the grant, any further than it is known that they did cut it down.

Their motive in cutting down the front from twelve miles to forty-four arpens is perfectly clear and obvious; they wanted to have the river bank thickly settled, and to have more of it free for disposal in small tracts to new settlers. These new settlers were, under O'Reilly's regulations, to have a depth of only forty arpens. Such were the grants to Delpino and Dorval, which were not made until 1774, some two years later than their surveys. But Unzaga's letter to Dauterive was written only about three months after his survey was made. The whole general tenor of Andry's process-verbal, of his letter to the Governor, and of the Governor's letter to Dauterive, shows that they recognized him as one who deserved well of the new government. The passion caused by the hostility of the French to the Spanish rule, and which O'Reilly had slaked in blood, had passed away; Dauterive's front stood greatly reduced, and there was no motive for interference with his ancient depth to the Atchafalaya. And the probability of any such interference is contradicted by our historical knowledge of the conduct of the Spaniards with reference to French grants.

After Dauterive's death, his widow and her husband, without right, surrendered the depth of forty arpens to Governor Galvez, and removed, with Dauterive's children, to another tract in the Attakapas. But is the surrender of forty arpens depth any indication that that was *all* the depth? Not so. Galvez wanted that depth for grants to the newly-arrived immigrants from Acadia. He intended to give them the very depth provided by O'Reilly's regulations for new settlers in general. Galvez wanted no more for the Acadians, and contracted for no more. The first forty arpens back from the Mississippi was all of the land that was then in a state for cultivation. Now, however, all of the land has found owners except about two thousand acres, and the heirs of Dauterive ask only land scrip for an equivalent amount, not disturbing a single possessor within the bounds of their ancient grant, confirmed by the Spanish authorities.

Respectfully submitted,

EDWARD JANIN,
Of Counsel for Appellants.

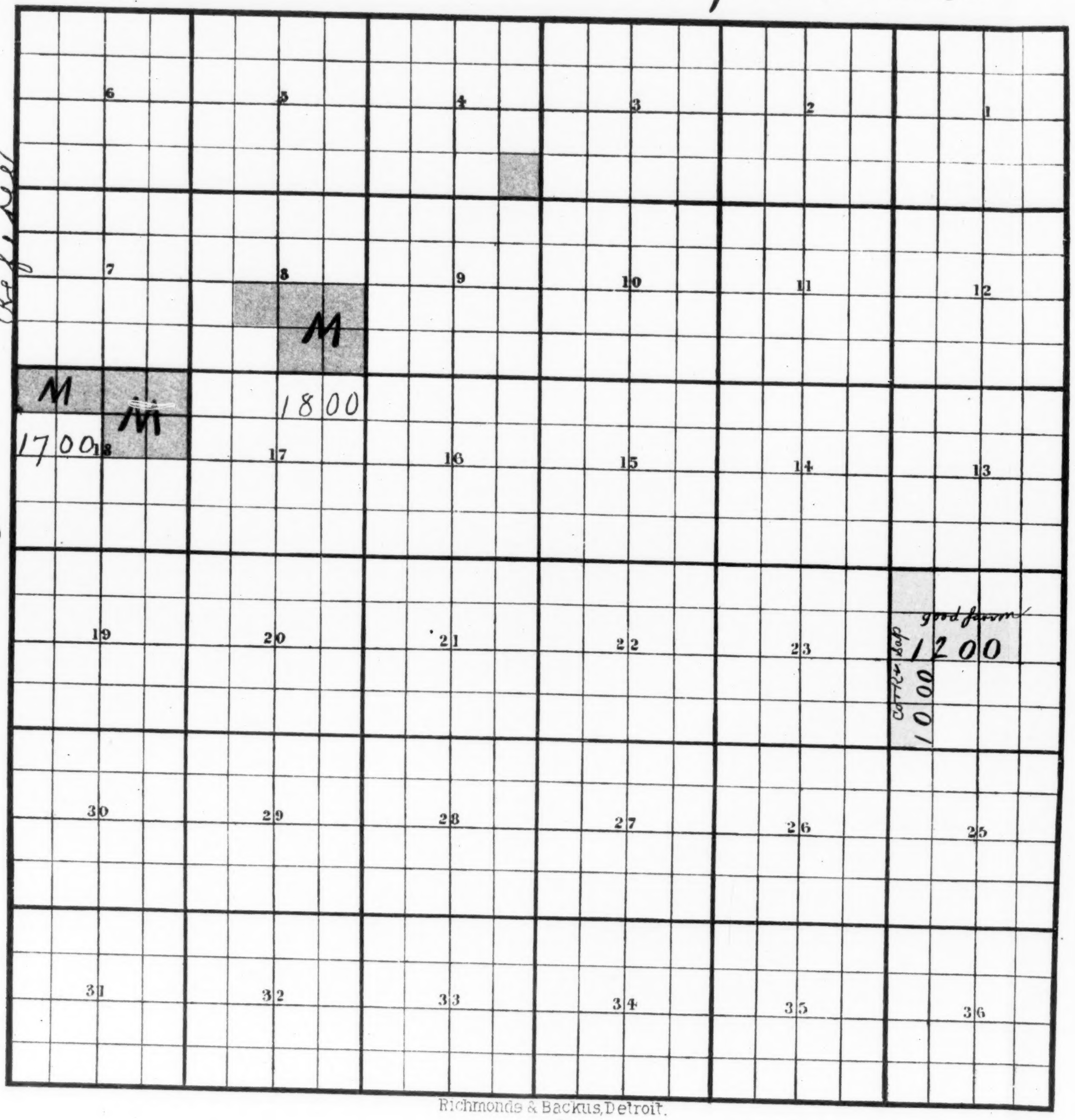
ended
egula-
more
e first
e land
er, all
usand
for an
within
panish

ants.

State Land Office.

Township 21 North Range 7 West Michigan.

Exhibit 6 of Defts. Proof
J. W. Ransom Referee



Richmonds & Backus, Detroit.
S 353.
No. 1.

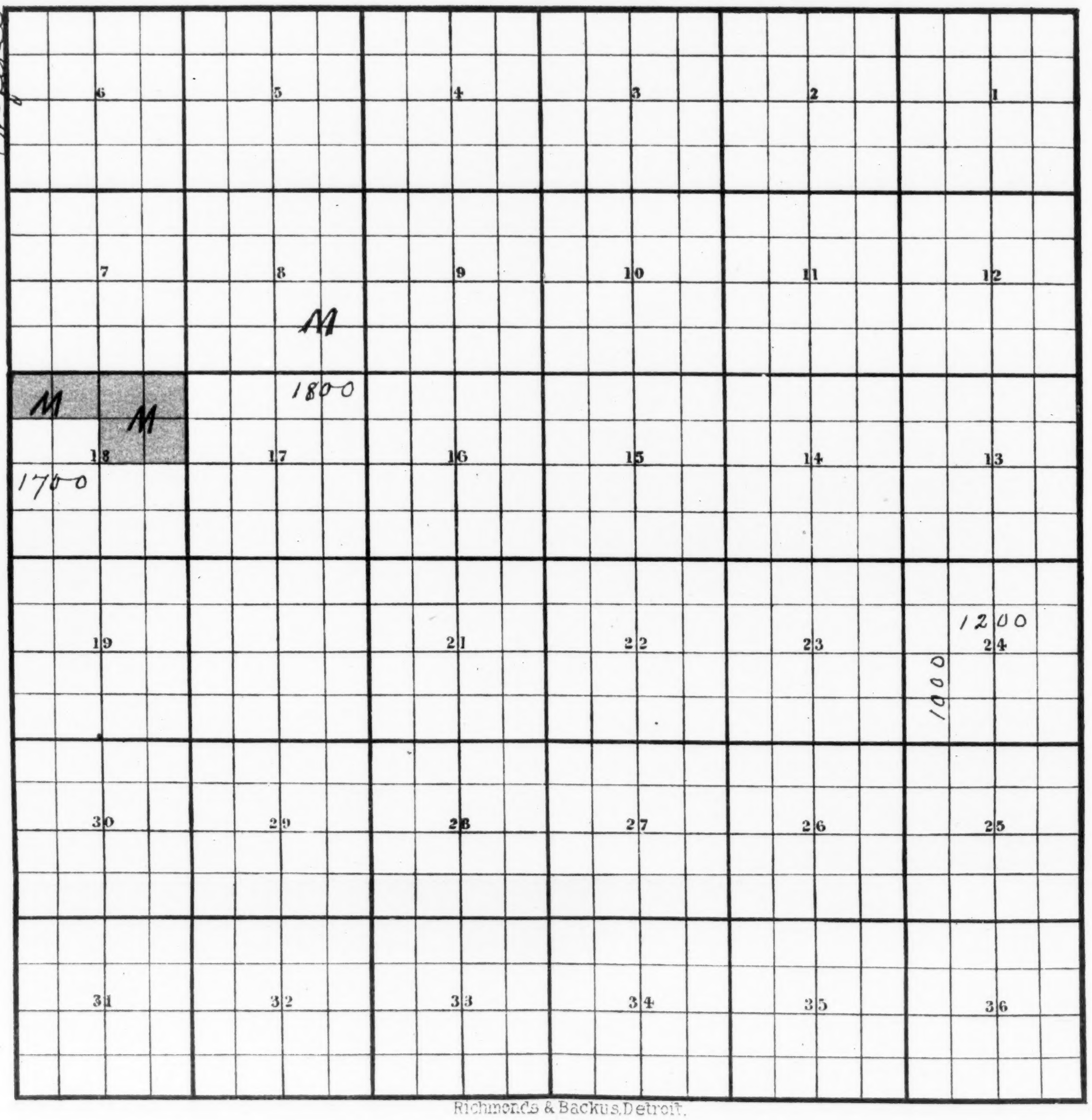
Vacant State Swamp Land
Sold " " "
Vacant School "

164

State Land Office.

Township 21 **North.** **Range** 7 West **Michigan.**

Exhibit "L" of Defts Proofs J. W. Ransom Referee



Richmonds & Backus, Detroit.
S 353
No. 1

Vacant State Swamp Land
Sold " " "
Vacant School "

J. Buerk.

Time Check.

No. 3,869. Reissued Mar. 8, 1870.

Fig. 2

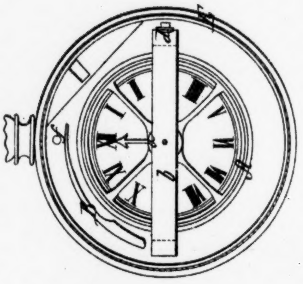


Fig. 4

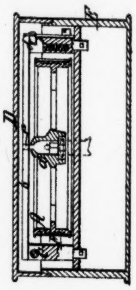


Fig. 3

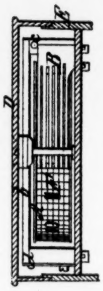


Fig. 6

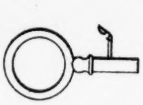


Fig. 5

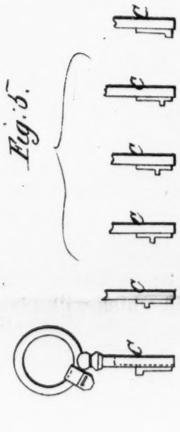


Fig. 7

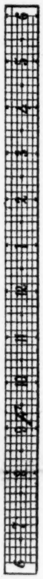
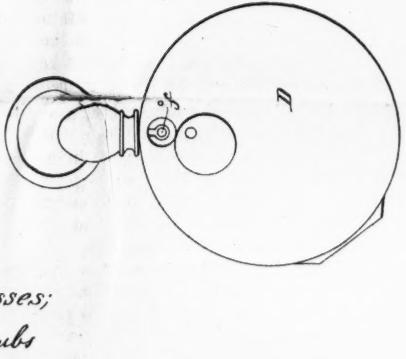


Fig. 1



Witnesses;
W.Coombs
S. Spencer

Inventor;
J. Burk
per Munn & Co
Attorneys

N. PETERS, PHOTO-LITHOGRAPHER, WASHINGTON, D. C.

UNITED STATES PATENT OFFICE.

JACOB E. BUERK, OF BOSTON, MASSACHUSETTS, ASSIGNEE OF JOHN BÜRK.

IMPROVEMENT IN WATCHMEN'S TIME-DETECTERS.

Specification forming part of Letters Patent No. 31,052, dated January 1, 1861; Reissue No. 2,054, dated August 22, 1865; Reissue No. **3,869**, dated March 8, 1870; patented in France October 29, 1[illegible]56.

To all whom it may concern:

Be it known that J. BÜRK, of Schwenningen, in the Kingdom of Würtemberg, did invent a new and useful Improvement in Watchmen's Time-Detecters; and that the following is a full, clear, and exact description thereof, which will enable others skilled in the art to make and use the same, reference being had to the accompanying drawing, forming part of this specification, in which drawing—

Figure 1 represents a face view of this invention when closed and ready for operation. Fig. 2 is a plan or face view of the same, the cover having been removed to expose the working parts. Fig. 3 is a side elevation of this invention, the case having been cut open to expose the working parts. Fig. 4 is a vertical central section of the same. Fig. 5 is an elevation of the several keys which are used for operating my watchman's control. Fig. 6 is an elevation of the key used for setting the same and to wind it up. Fig. 7 is a plan or face view of the piece of paper which gives an account of the circuit of the watchman.

Similar letters indicate corresponding parts in the several figures.

The devices heretofore used for the purpose of controlling watchmen are of a complicated construction, which renders them very expensive, and in many cases very liable to get out of order and difficult to repair. Furthermore, most of the devices can only be used in one spot, and in each room and other place in the circuit or beat of the watchman a separate controlling device has to be provided.

The watch which the watchman can carry with him, and which will give a clear, true, and permanent picture of the circuit of the watchman in regard to time and direction, would be of a decided advantage; and these results are accomplished by this invention by a device which is at once very simple, and not subject to the disadvantage of a complicated mechanism, and can be got up with little expense, and for this very reason brought into common use; and a watchman's control is thus obtained which is far superior to anything now in use, as far as convenience, security, and simplicity are concerned.

This device is so arranged that it can be combined with every stout watch, or with any other portable clock-movement, and it is inclosed in a strong metallic case.

It is placed in the hands of the watchman, locked, just before he starts on his beat, and on his return he gives it back to the superintendent or supervising officer, who, on opening the same, can find recorded or indicated the precise time when the watchman has visited the several stations to be visited on his beat, which direction he has taken, in which order he has visited the several stations, what delays and deviations have occurred, how long he has tarried on the way between the several stations and on the stations themselves, &c. This purpose is effected by a removable piece of a paper or other suitable material, and marked off into a convenient number of parts to represent hours of the day, in combination with a chronometer or other time-piece and one or more marking devices, for marking said movable strip of paper or other material, in such a manner that by the marks produced in or on the movable strip the time when the watchman has visited the station or stations is recorded, and can be ascertained at any time after the watchman has completed his round, said strip of paper partaking of the movement of the time-piece by being made to revolve with it.

If only one station is to be visited by the watchman, either the chronometer-movement or the device for actuating the piercing-instrument may be stationary; but when more than one station is included in the beat of a watchman, different keys used for actuating the piercing-instruments are firmly secured, one at each station, and the watchman carries the chronometer or watch from one station to the other, and by inserting the key in each station the piercing-instruments are actuated and the indentations are produced, which form a record of the time when he has passed such station or stations.

In this invention the strip of paper is upon a drum or surface, which is connected with the watch so as to partake of its movement. The drum A is provided on its edge with small projecting flanges, and is fitted on the arbor of the hands of the watch or clock movement, the minute-hand having been taken off, and a slot in the lower edge of its hub *a* fits over the hour-hand in such a manner that said drum is caused to rotate once in twelve hours with the hour-hand. It is retained in its place by a bar, *b*, which is hinged to a post, *c*, on one side of the dial, and which is secured by a spring-catch, *d*, on the opposite side, and a pin, *e*, which projects from the lower surface of said bar into a central opening in said hub of the drum, serves to keep the same steady during its motion. Beyond the drum, and secured to the face-plate of the watch, which is somewhat larger than said drum, are arms containing a series of spring marking-points, B, one above the other. Said points are turned toward the circumference of the drum, and they stand exactly opposite the figure XII on the dial of the watch. Close behind these spring-points, and firmly fastened in the face-plate, is a pin, *f*, that receives the several keys C which serve to operate the springs. The whole is covered up by the cover D of the case E, and a small lock, which is attached to the inner side of the case, serves to fasten said cover.

If a strip of paper or other suitable material is now wound around the drum A, and if one or more of the points are forced up against the circumference of said drum by one of the keys C, which are inserted on the pin *f* through a suitable key-hole, *c*, in the cover D, small holes are produced in said movable strip of paper or other material by the action of the points. The circumference of the drum is provided with grooves corresponding in number to the spring-points, and just opposite to the same, so that the space below those portions of the paper which are to be penetrated by the points is hollow, and the points can pass through the paper without becoming injured.

The strip of paper F is divided into twelve hours and into the required parts of hours by lithographic printing, and it is retained in place by a small point projecting from the face of the drum. The division on the strip of paper in this example goes from 6 to 6, (see Fig. 7;) but it may commence or end with any other hour, as may be desirable. In placing the strips of paper on the drum, the dot in the figure 6 on the black end of the paper is pressed on the point of the drum, which is provided for retaining th,m in place, and the strip of paper is drawn from left to right, thereby bringing the dot in the figure 6 at the white end of the paper also on the point of the drum. The number of the marks produced on the strip of paper depends entirely upon the form of the bit of the key, for if this bit is so arranged that the same depresses one, two, three, four, &c., spring-points, an equal number of holes is produced on the corresponding places of the paper.

For convenience and facility in reading off the record of marks produced on the strips of paper, said strips are colored red at their under sides, and are provided with gum or mucilage for the purpose of fastening them into a book, and, as they are made moist for this purpose, the red color penetrates through the holes, and makes them appear perfectly clear and distinct on the upper surface of the paper.

The operation will be easily understood.

In the beat of the watchman a number of stations are selected which are to be visited regularly by the watchman at every hour, or at certain fixed intervals. In each of these stations a small closet is provided, in which is secured, by a chain or any other desirable means, one of the controlling-keys C. Such chain is attached in the interior of the closet in such a manner that the key cannot be taken away.

The watch is wound up every day by the superintendent, and a fresh strip of paper is fastened to it, and then the watch is locked. The key for opening the watch remains in the hands of the superintendent. In this state the watchman receives the watch, and all he has to do is, on reaching the several stations, to take the keys fastened in the same, insert them into the key-hole in the cover of the case, and turn them so as to force the spring-points through the paper at their respective spots.

The number of the marks produced by the spring-points can be made to correspond to the number of the stations—on the first station, one hole; on the second, two; on the third, three, and so on, if the number of the stations does not exceed that of the points. If the number of the stations exceeds that of the points, they can be marked on the strip of papers by various combinations of the points without changing in the least the construction of the apparatus.

Six spring-points will be sufficient for a large number of stations, as it is not necessary to designate a great many stations, since a small number of stations can be selected, so as to compel the watchman to pass over the entire beat in going his round.

It is still of no small advantage to be able to use the same watch for a large number of stations, since its use is not restricted to single houses, manufactories, or towns; but it may be used with advantage on post-routes and railroads.

At the end of the day the watch is returned to the superintendent. He opens it, takes out the movable strip of paper, replaces it by a new one, winds up the watch, sets it if necessary, locks it, and returns it to the next watchman. On the movable strip of paper he finds everything marked as hereinabove stated; and if it is desired to know how long the watchman has tarried at each station, it is only necessary to order him to turn the respective keys at the moment he reaches each station, and again just before leaves the same.

For the purpose of setting the watch the same key is used which serves to wind it up. This key is represented in Fig. 6 of the drawing; and it will be noticed that it has a pin, *g*, inserted in its side. This pin represents the minute-hand of the watch, and the key is inserted in the central arbor of the watch, so that said pin *g* corresponds with the position of the minute-hand, and it is now turned until it corresponds with the proper figure to designate the correct time.

The principal advantage of this device is that it can be carried conveniently in the pocket. Its construction is extremely simple and durable, and it can be made and sold at a reasonable cost. It is arranged so that the same watch can be used for any number of stations without changing its construction or rendering it more complicated. It can be placed in the hands of the most awkward watchman, since it makes no difference in what direction or how often the keys are turned. It is very easy to prevent an imitation or forging of the keys by the watchman, simply by changing the keys sometimes without the knowledge of the watchman. It gives the means to read off the correct account of each station by taking out the movable strip of paper, and it enables the superintendent to keep a continuous account of the manner in which the watchman performs his duty by pasting the several strips of paper on the leaves of a book kept for that purpose.

Having thus fully described this invention, what is claimed as new, and desired to be secured by Letters Patent, is—

1. The drum A, carrying a removable strip of paper or other suitable material, marked or divided off in a convenient number of parts, in combination with a chronometer-movement or time-piece, and with one or more marking devices, substantially as and for the purpose set forth.

2. The combination of the marking device B, fastened internally to a time-piece, with a watch-movement, and with a series of keys, C, and a surface for receiving marks, substantially as described.

JACOB E. BUERK.

Witnesses:
J. T. BUSWELL,
O. T. GOULD.

Anton Meyer's Impd Watchmans Time Detector.

117442

PATENTED JUL 25 1871

Fig: 1.

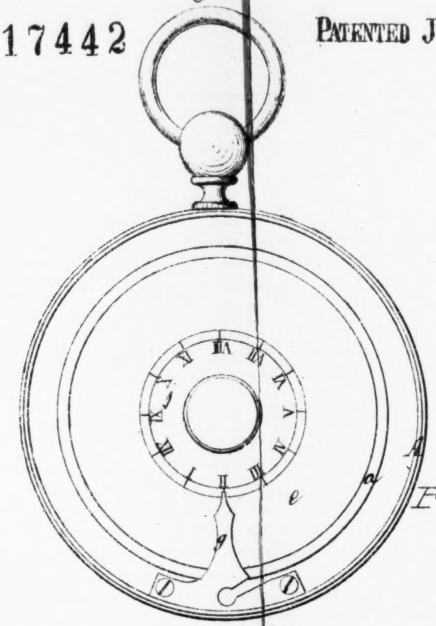


Fig: 2.

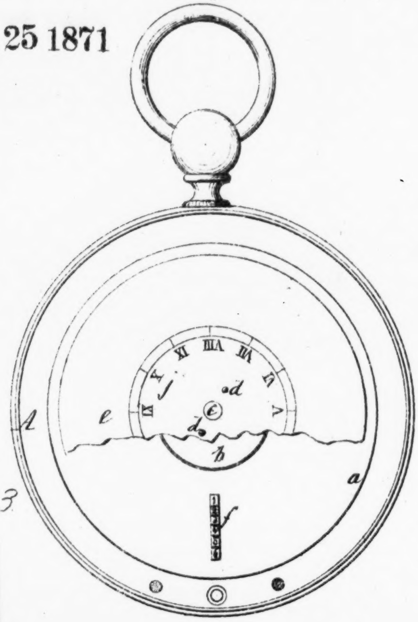


Fig: 3.

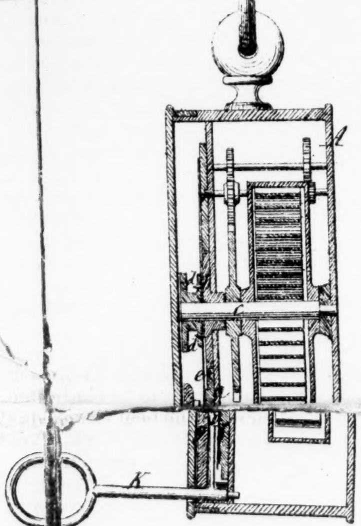
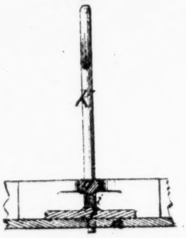


Fig: 4.



Witnesses
C. Wahlers
E. Bilhuber

Inventor
Anton Meyer
per
Van Santvoort & Hauff
Attys

AM. PHOTO-LITHOGRAPHIC CO. N.Y. (OSBORNE'S PROCESS.)

117,442

UNITED STATES PATENT OFFICE.

ANTON MEYER, OF STUTTGART, GERMANY.

IMPROVEMENT IN WATCHMEN'S TIME-CHECKS.

Specification forming part of Letters Patent No. 117,442, dated July 25, 1871.

To all whom it may concern:

Be it known that I, ANTON MEYER, of Stuttgart, in the Empire of Germany, have invented a new and useful Improvement in Watchman's Time-Detecter; and I do hereby declare the following to be a full, clear, and exact description thereof, which will enable those skilled in the art to make and use the same, reference being had to the accompanying drawing forming part of this specification, in which drawing—

Figure 1 represents a face view of this invention. Fig. 2 is a similar view of the same, the dial-plate being partially broken away to expose the marking-dies. Fig. 3 is a transverse central section of the same. Fig. 4 is a detached section of the cam-shaped bridge.

Similar letters indicate corresponding parts.

This invention consists in the arrangement of one or more stationary marking-dies in the face-plate of a watch or clock in combination with a cam-shaped bridge extending over the marking-die or dies, and with one or more keys, the bit or bits of which correspond in position to the marking-die or dies in such a manner that, by affixing a disk of paper or other suitable material to the movable dial-plate of the watch or clock, and causing said disk to revolve between the stationary marking-die or dies and the cam-shaped bridge, the key or keys, on being introduced into the watch or clock-case and turned in the proper direction under the cam-shaped bridge, will depress the paper or other material on the marking-die corresponding to the position of its bit, and the exact time when the watchman has visited a certain room or station on his beat will be recorded on the disk of paper or other material.

In the drawing, A designates the case of a watch or clock, in which is firmly secured a stationary face-plate, *a*, the central part of which is cut out to make room for a disk, *b*, which is secured to an arbor, *c*. This arbor connects by suitable gear with the clock-movement, and it revolves once in twelve hours. The surface of the disk *b* is flush with the surface of the stationary face-plate *a*, and it is provided with two or more points, *d*, so that a dial, *e*, of paper or other suitable material can be readily attached to it, and that, when such dial is placed on the disk, it will be compelled to follow the motion of the same. From the face-plate *a* project one or more stationary dies, *f*, the faces of which have engraved or otherwise produced in them figures, letters, or other suitable characters, and which, when more than one such die is used, are set in a radial direction, as shown in Fig. 2 of the drawing. These dies are situated beneath a bridge, *g*, which is firmly secured to the case *a*, and which is perforated with a hole, *h*, to receive the key K. The under surface of the bridge is cam-shaped, as shown in Fig. 4, and the upper surface of the key is rounded, so that, when the key is inserted into the key-hole and turned round under the bridge, the projection *i* on said key will be depressed toward the die, and the dial *e*, which is carried through between the dies and the bridge, will receive an impression to correspond to the face of the die. The position of the projection *i* on the key, of course, must correspond to the position of the die, and if more than one die is used several keys have to be prepared, one for each die. These keys are intended to be secured in the various rooms or stations composing the beat of the watchman, the watchman carrying the clock or watch, the case of which is locked by a key in the possession of the superintendent or proprietor of the place. On reaching a certain station the watchman inserts the key in his clock and, by turning it, a mark is produced on the dial *e* indicating the station. On the dial is also marked a time-table, *j*, and the bridge *g* may serve as the index pointing on the divisions of the time-table. As the dial is carried around by the clock-movement, the time when a mark is produced on the dial by one of the keys can be read off from the time-table and the movements of the watchman on his beat can be controlled. If the number of stations in the beat exceeds the number of the marking-dies in the clock, keys can be prepared with two or more projections, and with six marking-dies a large number of stations can be controlled. If desired the bridge *g* may be made yielding, so that its action on the key will depend not only on its cam-shaped face, but also on the action of a spring having a tendency to force said bridge in toward the marking-die or dies.

I am aware that a watchman's time-detecter has been heretofore made in which spring marking-points are used to indicate the different rooms or stations in the beat, such as described in the patent of J. E. Buerk, June 6, 1865. For these spring marking-points I have substituted stationary dies representing figures or letters, whereby the stations of a beat are readily recognized; and furthermore, the stationary dies are easier made than the spring marking-points, they are less liable to get out of order, and the impressions produced by them cannot be forged without having exact counterfeits of the dies.

I disclaim everything shown and described in the patent of J. E. Buerk, above mentioned.

What I claim as new, and desire to secure by Letters Patent, is—

The stationary marking-die or dies, situated beneath a cam-shaped bridge, in combination with a suitable key or keys and with a dial passing through between the marking-die or dies and the bridge, substantially as herein shown and described.

This specification signed by me this 25th day of April, 1871.

Witnesses: ANTON MEYER.

—— HAHN,

E. KLAUPRECHT.

54

T. HAHN.

Watchmans' Time-Checks.

No. 138,084. Patented April 22, 1873.

Fig. 1.

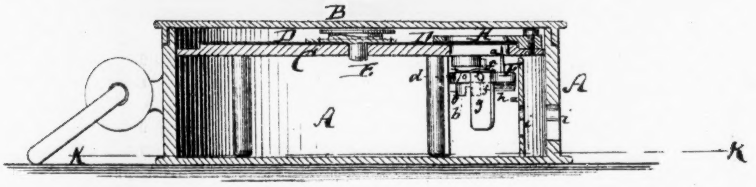


Fig. 2.

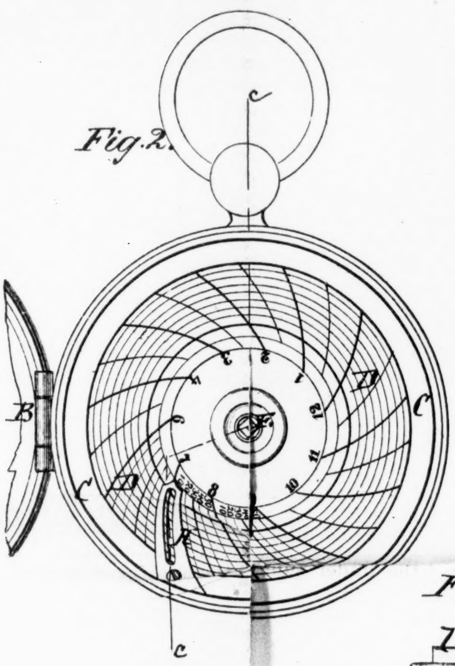


Fig. 3.

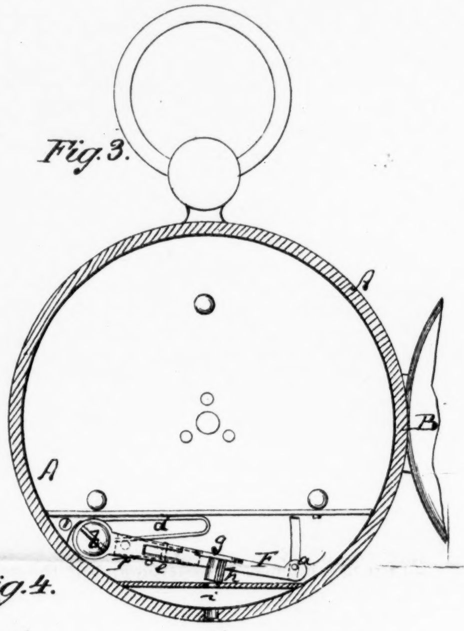
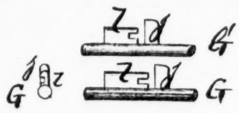


Fig. 4.



Witnesses:

John Becker

Sedgwick

Inventor:

T. Hahn

PER Munn & Co

Attorneys.

AM. PHOTO-LITHOGRAPHIC CO. N.Y. (OSBORNE'S PROCESS)

UNITED STATES PATENT OFFICE.

THEODORE HAHN, OF STUTTGARDT, GERMANY.

IMPROVEMENT IN WATCHMAN'S TIME-CHECKS.

Specification forming part of Letters Patent No. **138,084**, dated April 22, 1873; application filed February 15, 1873.

To all whom it may concern:

Be it known that I, THEODORE HAHN, of Stuttgardt, in the Kingdom of Würtemberg, Germany, have invented a new and Improved Watchman's Time-Detector, of which the following is a specification:

Figure 1 is a sectional view of my improved time-detector taken on the line C C, Fig. 2. Fig. 2 is a face view of the same. Fig. 3 is a section on the line K K, Fig. 1. Fig. 4 is a side view of two different-sized keys and an end view of one of the same.

Similar letters of reference indicate corresponding parts.

The object of this invention is to simplify the construction of watchman's time-detectors and to lessen the expense of the same so that they may come within reach of all who heretofore avoided the use of time-detectors on account of their great expense and complexity. My invention consists in using in connection with a rotary paper dial a piercing-tool, which is acted upon by several different-sized keys, and which is pivoted below the dial-support, so that it can be swung nearer to or further away from the center of the dial, and which is jointed so that it may be swung up by the keys to pierce the dial. This tool or piercer is provided or connected with two springs, one of which serves to keep it down and to hold the piercing-points away from the paper, while the other swings it outward to its greatest distance from the center of the dial. The pivoted jointed piercer will, therefore, answer all the purposes of the complex devices heretofore employed in watchman's time-detectors, and it is a far less expensive and at the same time much more reliable instrument for this purpose than all the devices formerly employed. Above the dial-support is, furthermore, employed a stationary pointer or hand to show the time on the movable dial, said pointer being, by preference, slotted to admit the piercing-pins through it from below.

In the accompanying drawing, the letter A represents the case or housing of my improved watchman's time-detector, made of cylindrical or other suitable shape. B is its lid, which may be hinged or otherwise attached to the case A. C is a circular plate, placed within the case A over the clock-work therein contained, which clock-work, however, is not shown in the drawing. This plate C is held immovable in the case and serves as a support for the rotating dial D, that is made of paper or equivalent material and placed upon C. The dial D is connected, in customary or suitable manner, with a spindle, E, of the clock-work, which spindle passes downward through the center of the plate C, and is properly connected with the clock-work to be rotated by the same, and thereby to impart rotary motion to the dial-plate D with the requisite speed. The face of the dial is by series of concentric circles subdivided into annular spaces, as shown in Fig. 2, each such annular space being intended to receive the action of a different key. The dial is also provided with cross-lines extending from the figures 1 to 12, that are written or printed on its inner part toward the periphery of the dial, each of the said cross-lines being made in a curve, whose radius is equal in length with that of the piercing-tool, hereinafter described. This piercing-tool F is pivoted to the under side of, or at least below, the plate C, and carries at its further end one or more upwardly-projecting pins, *a*. On its pivot-pin *b* the tool F can swing horizontally, and by a spring, *d*, it is swung out to its greatest extent, in manner indicated in Fig. 3. At *e* the tool F is jointed so that its free end can be swung up or down, the most downward position being that of a straight line with its shank that is pivoted by the pin *b*. A spring, *f*, shown in Fig. 1, bears upon such outer jointed part of the tool F and holds it down in a horizontal position. From the under side of the tool F projects downward a plate, *g*, and forward of the same is a prismatic or other shaped rod or lug, *h*. When the key G is introduced through the key-hole *i* of the case A its end will bear against the plate *g* and will crowd the tool F inward as far as the end of the key will be able to so move the tool. Each key G is provided with a projecting lug, *j*, back of its ward *l*, as shown in Fig. 4, the lug *j* serving to arrest it against the key-hole plate, and to regulate its depth of entry into the lock, so that if keys having wards *l* of various lengths are employed on the same instrument successively, each key will crowd the tool F inward a certain specific distance, differing from that to which any of the other keys moves the same, so as to bring its projecting piercing point or points *a* under one particular one of the annular rings formed on the surface of the dial. Upon turning each key in the lock its ward will bear against the lug *h* of the tool F and will swing the jointed part of such tool up and cause the pin *a* to pass upward through a slot in the plate C and through the paper D that rests thereon, and to pierce such paper in that one of the annular subdivisions which it is intended for such key to control.

In Fig. 3 the slot in the plate C is clearly shown. Directly above this slot, but above the paper dial, is a similar slot in the pointer H, which pointer is stationarily affixed to the case A or plate C. The curve of the pointer, or at least that of its slot and that of the slot in C, is taken on a radius equal to the length of the tool F, and on the same radius also as the cross-lines on the dial, to permit the piercing-pins *a* to be brought under any one of the annular subdivisions of the dial, and to indicate, when raised through the paper, the correct time in either one of said subdivisions at which it was caused to pierce the same. The dial made with the curved cross-lines is, therefore, an important feature of my invention.

The manner of using this instrument is substantially the same as that of similar instruments already in use—that is to say, the several keys are secured in the places to be visited by the watchman who carries the clock with him, and who, upon reaching a key, introduces the same through the key-hole *i* and turns it once around so that the paper dial will be pierced in position to indicate by which key it has been pierced and at what time. The watchman can thus, by this means, be fully controlled.

Having thus described my invention, I claim as new and desire to secure by Letters Patent—

1. The rotary dial D, made with the concentric annular subdivisions and with cross-lines curved on a radius equal in length to the pivoted carrying-arm of the piercing-tool, substantially as described.
2. The pivoted arm F of the piercing-point *a*, arranged below the plate C and jointed to be horizontally as well as vertically flexible or movable, as described.
3. The curved slotted supporter H applied above the rotary dial D and above the piercer of the jointed pivoted arm F, substantially as described.
4. The tool-arm F, provided with the pendent plate *g* and lug *h*, as specified.

THEODORE HAHN.

Witnesses:
FRED. STOTZ,
L. M. JULE.

38

A. MEYER.

Watchman's Time-Detectors

No. 156,098. Patented Oct. 20, 1874.

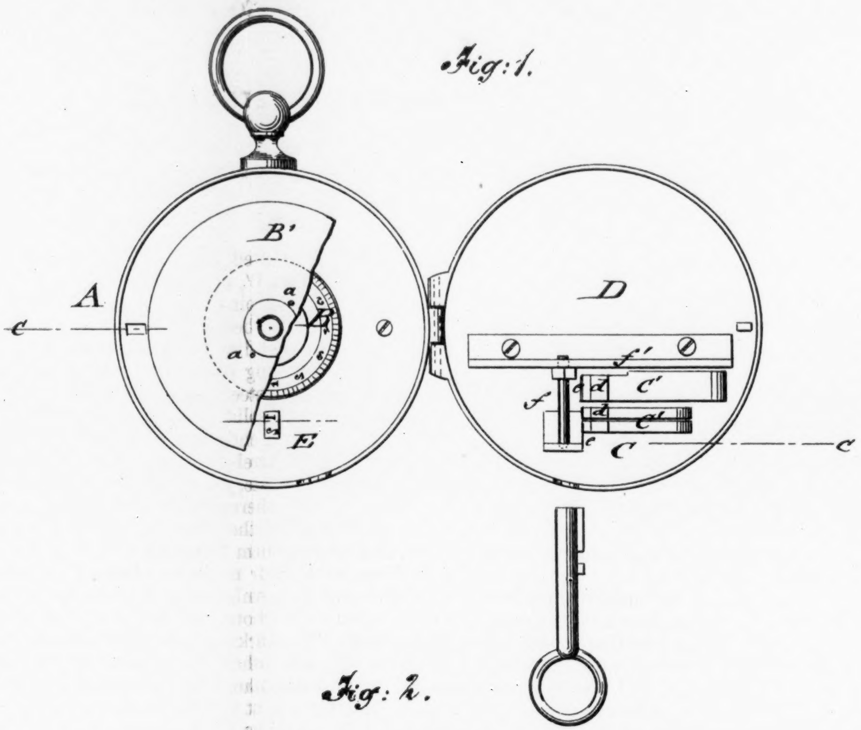


Fig: 1.

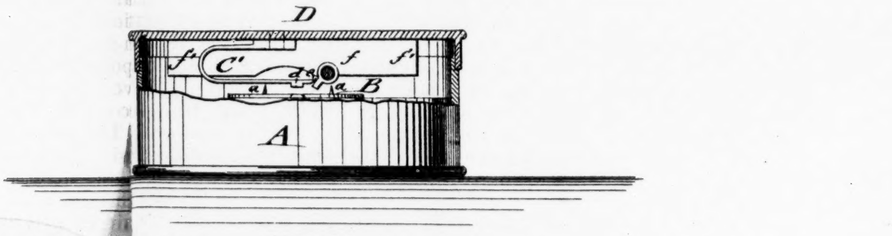


Fig: 2.

WITNESSES:

Chas. Nida

A. F. Terry

INVENTOR:

A. Meyer

BY Munn & Co

ATTORNEYS.

THE GRAPHIC CO. PHOTO-LITH. 39 & 41 PARK PLACE, N.Y.

UNITED STATES PATENT OFFICE.

ANTON MEYER, OF STUTTGART, GERMANY, ASSIGNOR TO THEODORE HAHN, OF SAME PLACE.

IMPROVEMENT IN WATCHMEN'S TIME-DETECTERS.

Specification forming part of Letters Patent No. **156,098**, dated October 20, 1874; application filed September 19, 1874.

To all whom it may concern:

Be it known that I, ANTON MEYER, of Stuttgart, Wurtemberg, Germany, have invented a new and Improved Watchman's Time-Detecter, of which the following is a specification:

In the accompanying drawing, Figure 1 represents a top view of my improved watchman's time-detecter, with lid thrown open to show interior construction; and Fig. 2 is a partial vertical transverse section of the same on the line *c c*, Fig. 1, showing arrangement of the marking devices.

Similar letters of reference indicate corresponding parts.

My invention relates to improvements in watchmen's time-detecters, by which the printed dials hitherto in use may be dispensed with and plain paper disks be substituted, on which the marks of the stations and the time are quickly printed, with or without colors, by suitable spring devices without the direct action of the keys on the marking parts and a bridge-piece. My invention consists of a rotating steel dial, which has the hour and minute subdivisions engraved in raised figures thereon, and is set in motion by a suitable clock-train. The numbers of the stations are arranged sidewise thereof and marked on a plain paper disk, rotating with the steel dial, by means of strong band-springs with steel marking-plates, which are actuated by the keys at the stations in such a manner that one spring strikes on the steel disk at each station for indicating the time, while the springs for marking the stations strike their corresponding numbers consecutively in the customary manner.

A represents the casing or box of my improved watchman's time-detecter, which is made in the usual style for being securely locked. A clock-train for rotating the central steel dial B is arranged in the body of the casing, while the spring-marking devices C are attached in suitable manner to the lid D. The steel dial B has the figures of the hour and minute subdivisions engraved thereon, the steel dies E for marking the numbers of the stations being secured sidewise of the steel dial, as many dies being provided as there are stations to be visited by the watchman. A plain paper disk, B′, is securely fastened by means of grooved pins *a* to steel dial B for rotating therewith, being large enough to extend over the steel dies for marking the stations. The marking devices C are made of strong **V**-shaped steel band-spring C′, provided with small solid marking-plates *d* and curved or tapering ends *e*, which are arranged sidewise of the barrel-guiding pin *f* attached to a supporting-plate, *f*′, of lid D, so that the key, when placed thereon and turned, engages the curved ends of the springs, presses them back, and allows them to strike with considerable force with their marking-plates *d* on the steel dial and dies, embossing thereby the time and number of stations on the interposed rotating disk. The marking-springs C′ are placed sidewise of each other, the innermost being stronger than the others and placed above the raised time-figures at the circumference of the steel dial B. All the keys are provided with end wards for actuating this time-marking spring at every station, while the wards for actuating the station-marking springs are arranged in changing positions thereon for producing the consecutive action of the same, and thereby the true record of the watchman's visits at the stations. The marks can be merely embossed, as described, or be printed in colors, as desired.

This detecter has this great advantage over the time-checks requiring printed dials, that anybody can make the disks. and, further, that the marks are clearly produced by the instant strokes of the springs without interference with the regular motion of the steel dial and clock-train. Hitherto the marks were made by keys pressing the marking devices on the paper dials and against a bridge, or pressing directly the paper dials against the marks; but paper dials and bridge are by the spring-marking of the keys dispensed with, and thereby the usefulness of the time-detecters improved to a considerable extent.

Having thus described my invention, what I claim as new, and desire to secure by Letters Patent, is—

1. As an improvement is watchman's time-detecter, a rotating steel dial with raised time-

indicating figures for imprinting on a plain disk the time of visiting any station, substantially as specified.

2. In a watchman's time-detecter, the combination of a rotating steel dial, station-marking steel dies, and plain disk, with strong steel springs with marking-plates actuated by the keys at the station for imprinting the time and number of stations on the disk, substantially in the manner and for the purpose set forth.

3. The combination of a marking-spring, actuated by the keys at every station, with a number of station-marking springs arranged therewith, to be actuated in consecutive order as the stations are visited, substantially as described.

4. In watchman's time-check, the marking band-springs, having striking-plates *d* and curved ends *e*, for being engaged by the keys for striking the marking-dies, as set forth.

The above specification of my invention signed by me this 4th day of August, 1874.

ANTON MEYER.

Witnesses:
ALBERT PERFER,
GOTTLOB DENZINGER.

indicating figures for imprinting on a plain disk the time of visiting any station, substantially as specified.

2. In a watchman's time-detecter, the combination of a rotating steel dial, station-marking steel dies, and plain disk, with strong steel springs with marking-plates actuated by the keys at the station for imprinting the time and number of stations on the disk, substantially in the manner and for the purpose set forth.

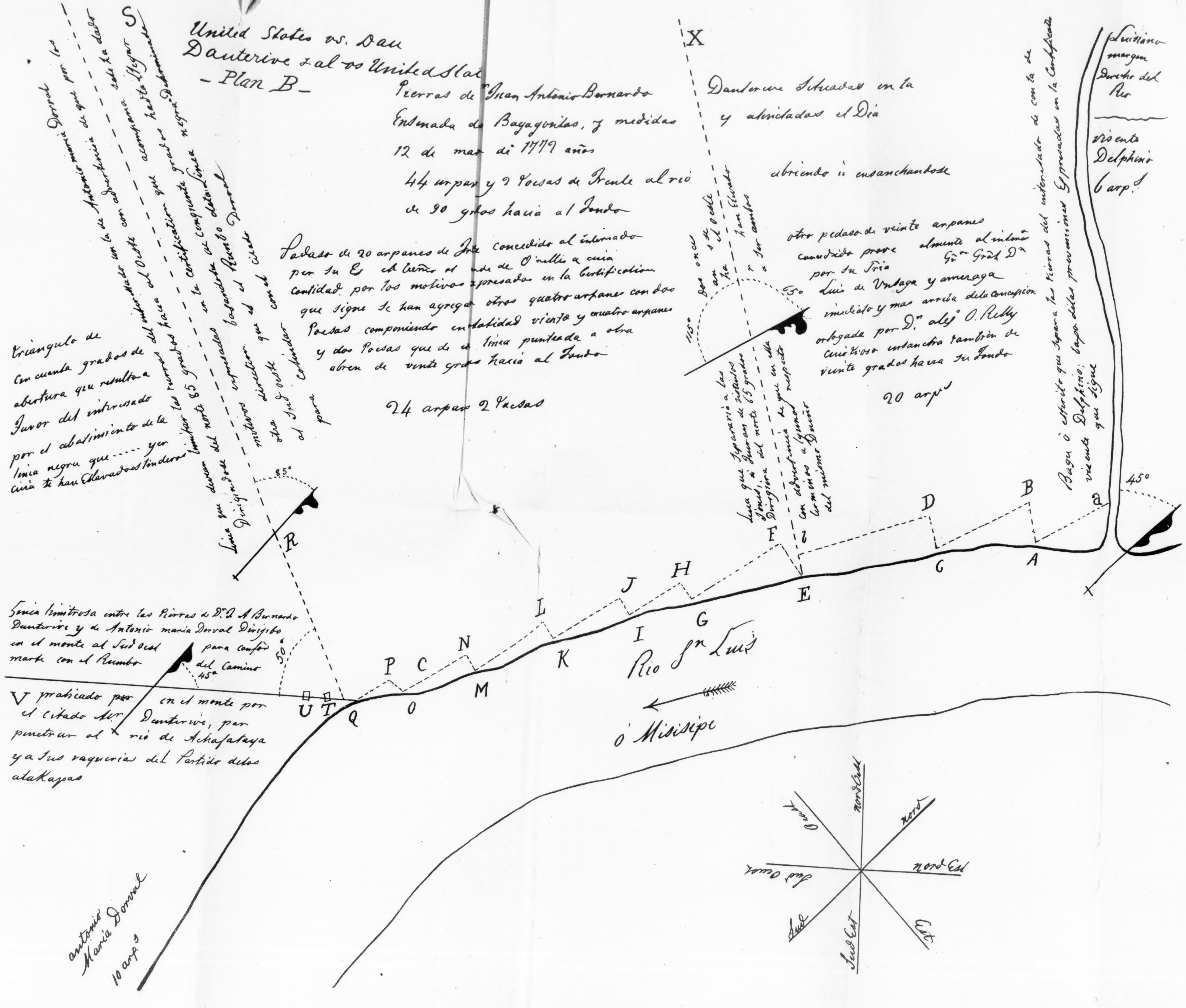
3. The combination of a marking-spring, actuated by the keys at every station, with a number of station-marking springs arranged therewith, to be actuated in consecutive order as the stations are visited, substantially as described.

4. In watchman's time-check, the marking band-springs, having striking-plates *d* and curved ends *e*, for being engaged by the keys for striking the marking-dies, as set forth.

The above specification of my invention signed by me this 4th day of August, 1874.

ANTON MEYER.

Witnesses:
ALBERT PERFER,
GOTTLOB DENZINGER.


United States vs. Dau
Dauterive & al vs United Stat
- Plan B -

Pierras de Dn. Juan Antonio Bernardo Dauterive Situadas en la Ensenada de Bagagoulas, y medidas y amojonadas el Dia 12 de mar de 1777 años

44 arpans y 2 Tocsas de Frente al rio de 90 grados hacia al Fondo

abriendo ó ensanchandose

Padaso de 20 arpanes de Fnte concedido al interesado per su Es el Exmo Sr Conde de O'nellis a cuia contidad por los motivos expresados en la Certificacion que sigue se han agregar otros quatro arpanes con dos Tocsas componiendo en totalidad viento y cuatro arpanes y dos Tocsas que de la linea punteada a otra abren de vinte grados hacia al Fondo

24 arpans 2 Tocsas

otro pedaso de veinte arpanes concedido prove almente al interesado por su Fria Gr. Grat Dn Luis de Unzaga y amezaga inmediato y mas arriba dela concepcion ortogada por Dn alejo O. Relly cuio Fioso ensanchra tambien de vinte grados hacia su Fondo

20 arpes

Linea que separaria las tierras del interesado de las de Juan de Ritulos Dirigiera del norte 65 grados con advertencia de que en ella se han observado los requisitos del mismo Dunio

Dos once an sessenta ha por ambos

Bayu ó estrito que separa las tierras del interesado de con la de vicente Delphino; baxo delas provenciones expresadas en la Certificado que sigue

Luisiano margen Derecho del Rio

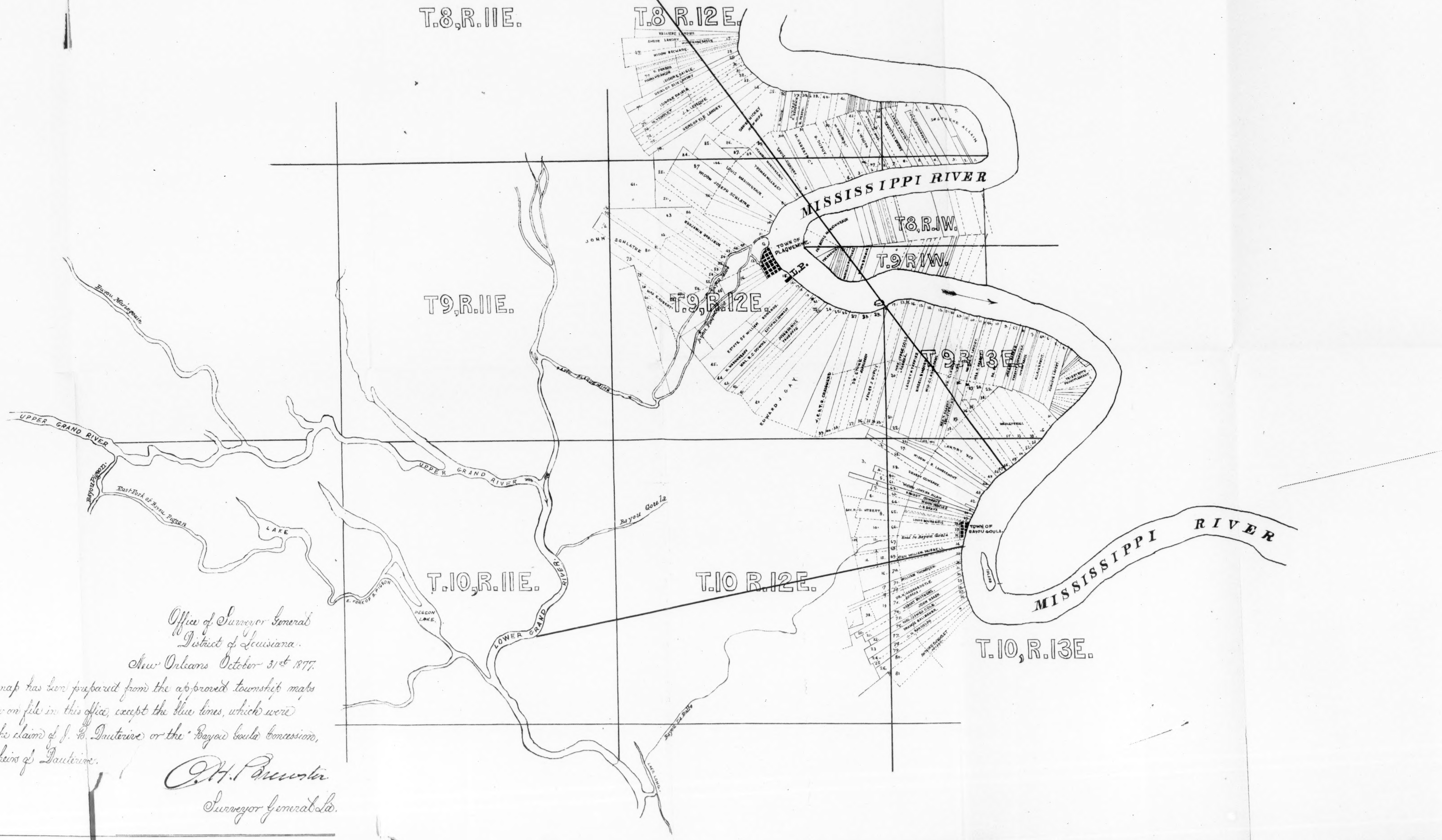
vicente Delphino 6 arps

Triangulo de Cincuenta grados de abertura que resulta a favor del interesado por el abatimiento de la linea negra que .... yer cuia te han Ellevados linderos

Linea que desean limitar las tierras del interesado con la de Antonio maria Dorval por los Dirigiendose del norte 85 grados hacia al Oeste con advertencia de que sobre ha dado expresadas en la certificacion que acompaña llegar basandose de cenquenta grados hasta Determinada mutivos directos que con el citado otra Sud oeste Rumbo delta Linea negra al Dorval para Comedar

Linea limitrosa entre las Pierras de Dn. J. A. Bernardo Dauterive y de Antonio maria Dorval Dirigido en el monte al Sud ocal para conformarte con el Rumbo del Camino praticado por en el monte por el citado Mr. Dauterive, par penetrar al rio de Achafalaya y a sus vaquerias del Partido delos atakapas

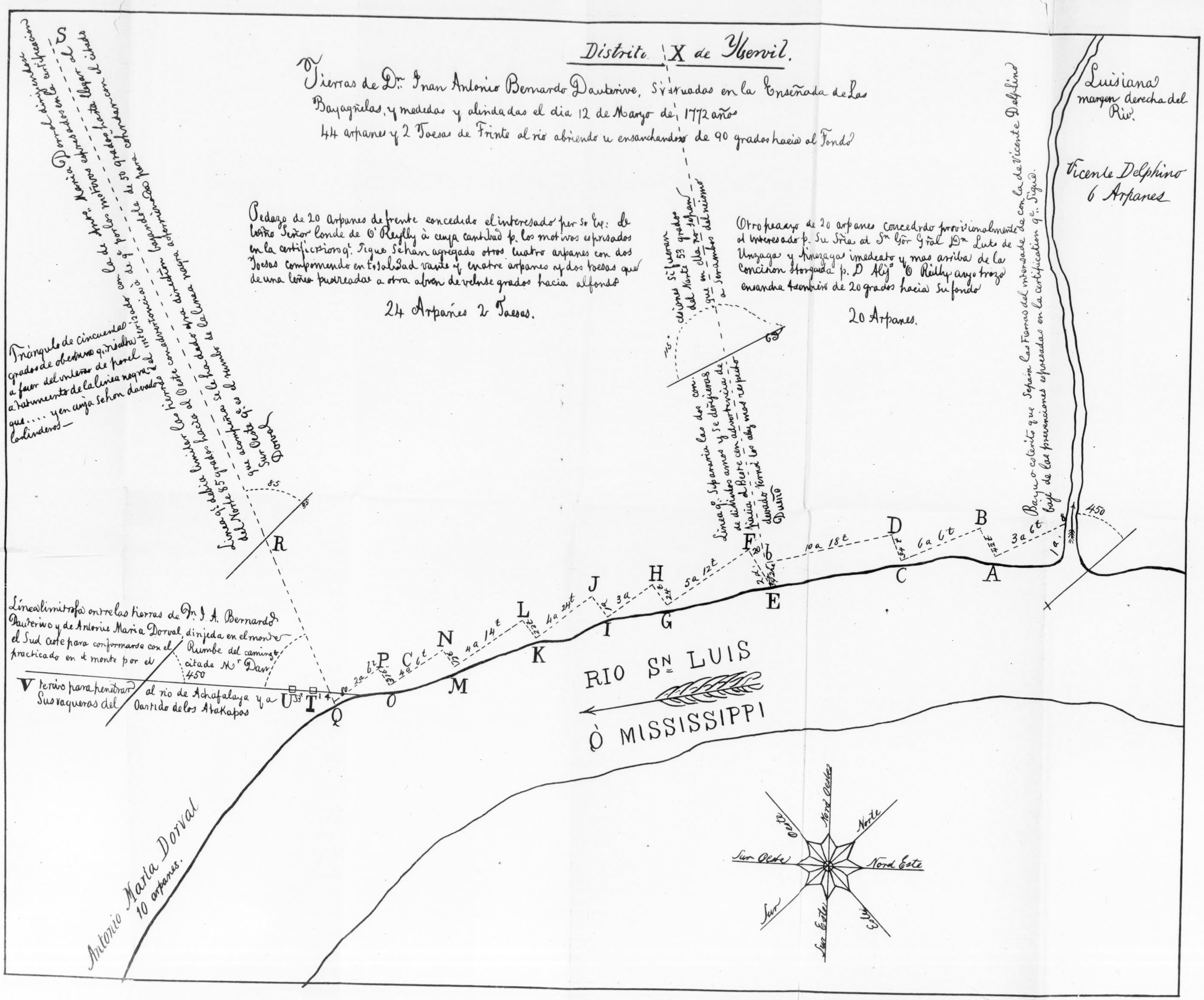
antonio Maria Dorval 10 arps



Office of Surveyor General
District of Louisiana.
New Orleans October 31st 1877.

The above map has been prepared from the approved township maps of the U. S. surveys now on file in this office, except the blue lines, which were placed to represent the claim of J. B. Dauterive or the "Bayou Goula Concession, as claimed by the heirs of Dauterive.

O. H. Brewster
Surveyor General La.



Distrito X de Ybervil.

Tierras de Dn. Inan Antonio Bernardo Dauterive, Situadas en la Enseñada de Las Bayagñelas, y mededas y alindadas el dia 12 de Maryo de 1772 años
44 arpanes y 2 Toesas de Frinte al rio abriendo u ensanchandose de 90 grados hacia al Fondo

Pedazo de 20 Arpanes de frente concedido el interesado per So Ex: de leciño Señor Conde de O'Reylly à cuya cantidad p. los motivos espresados en la certificxion q. sigue Sehan agregado otros cuatro arpanes con dos Toesas compomendo en totalidad vante y cuatre arpanes y dos toesas que de una leña pudreadar a otra abren de velnse grados hacia alfondo

24 Arpanes 2 Toesas.

Otro pedazo de 20 arpanes concedido provisionalmente al interesado p. Su Sria al Sn Gôr Gral Dn Luis de Unzaga y Amezaga imedeato y mas arriba de la Concision otorgada p. D Alij O Reilly cuyo trozo ensancha tambien de 20 grados hacia Su fondo

20 Arpanes.

Triángulo de cincuenta grados de obertura q. resulta a favor del interesado de parel a tatumeento de la linea negra que.... y en cuya se hon davado los linderos —

Linea q. debia limitar las tierras con la de Anto. Maria Dorval dirijendose del Norte 85 grados hacia al Oeste con advertencia de q. por los motivos expresados en la certificacion se le ha dado una direction de 50 grados hasta llegar al que acompaña es el rumbo de la linea negra separando la interiorizado al hiendo adeterminado para conformar con el citado Sur Oeste q. Dorval

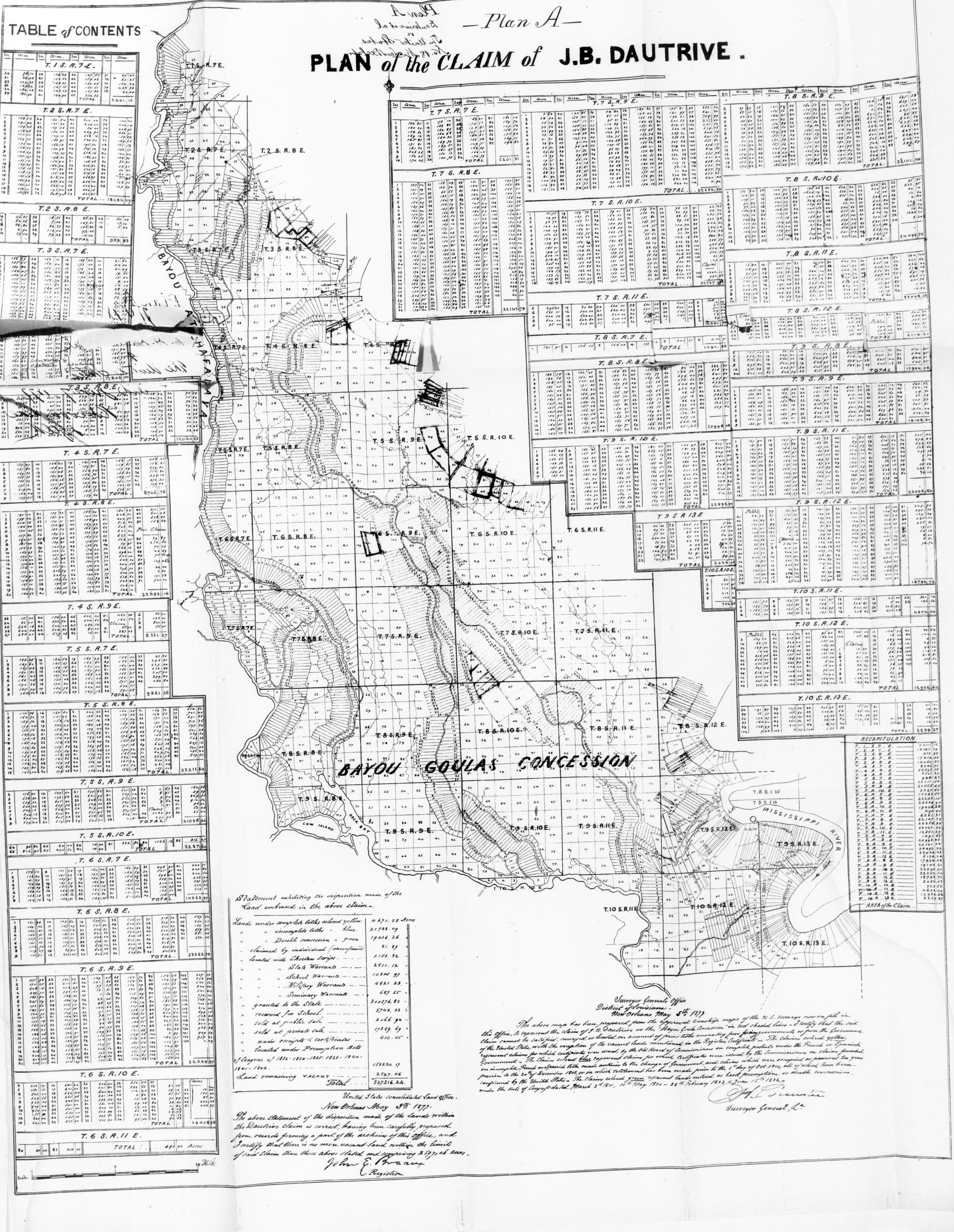
Linea q. Separaria las dos concesiones si fueran de distintos amos y se dirijieran del Norte 53 grados hacia al Oeste con advertencia de que en ella no se fijan lindado Verrud los ahy mas respecto a ser ambos del mismo Dueño

Linea limitrofa entre las tierras de Dn. J. A. Bernardo Dauterive y de Antonio Maria Dorval dirijida en el monte el Sud oeste para conformarse con el Rumbe del camino practicado en el monte por el citado Mr Dau terivo para penetrar al rio de Achafalaya y a Sus vaqueras del Partido de los Atakapos

Berno o esterito que Separa Las Tierras del interesado con la de Vicente Delphino baxo de las prevenciones expresadas en la certification qe. Sigue.

—Plan A—

PLAN of the CLAIM of J.B. DAUTRIVE.



RECAPITULATION.	
T. 1 R. 7 E.	3401.16
T. 2 R. 7 E.	18486.09
T. 2 R. 8 E.	959.93
T. 3 R. 7 E.	17802.00
T. 3 R. 8 E.	14060.55
T. 4 R. 7 E.	8746.76
T. 4 R. 8 E.	22693.16
T. 4 R. 9 E.	8331.27
T. 5 R. 7 E.	9861.25
T. 5 R. 8 E.	22211.64
T. 5 R. 9 E.	21056.46
T. 5 R. 10 E.	3227.60
T. 6 R. 7 E.	10363.57
T. 6 R. 8 E.	23265.15
T. 6 R. 9 E.	26648.97
T. 6 R. 10 E.	19008.28
T. 6 R. 11 E.	490.00
T. 7 R. 7 E.	6261.31
T. 7 R. 8 E.	22147.79
T. 7 R. 9 E.	22256.99
T. 7 R. 10 E.	22737.83
T. 7 R. 11 E.	12551.29
T. 8 R. 7 E.	1091.53
T. 8 R. 8 E.	20998.48
T. 8 R. 9 E.	23101.44
T. 8 R. 10 E.	24492.72
T. 8 R. 11 E.	23048.43
T. 8 R. 12 E.	6176.24
T. 9 R. 8 E.	17924.08
T. 9 R. 9 E.	19105.61
T. 9 R. 10 E.	22593.97
T. 9 R. 11 E.	22022.50
T. 9 R. 12 E.	18793.73
T. 9 R. 13 E.	2026.03
T. 10 R. 10 E.	722.65
T. 10 R. 11 E.	4674.00
T. 10 R. 12 E.	12956.64
T. 10 R. 13 E.	3259.27
AREA of the Claim..	

Statement exhibiting the disposition made of the Land embraced in the above claim.

Lands under complete titles colored yellow.	4671.28 Acres
" " incomplete titles " blue.	21723.09 "
" " Double concession " green	19436.26 "
" claimed by individuals (unconfirmed)	81.89 "
" located with Choctaw Scrips.	1153.32 "
" " " State Warrants	2511.12 "
" " " School Warrants	10385.97 "
" " " Military Warrants	4821.23 "
" " " Seminary Warrants	687.55 "
" granted to the State	300376.83 "
" reserved for School	5742.33 "
" sold at public sale	2066.92 "
" sold at private sale	17389.69 "
" under receipts & certificates	410.05 "
" located under Preemption Acts of Congress of 1832-1834-1835-1838-1840-1841-1842.	153230.17
Land remaining VACANT	2597.06
Total	547216.24.

United States consolidated Land Office.
New Orleans May 5th 1877.

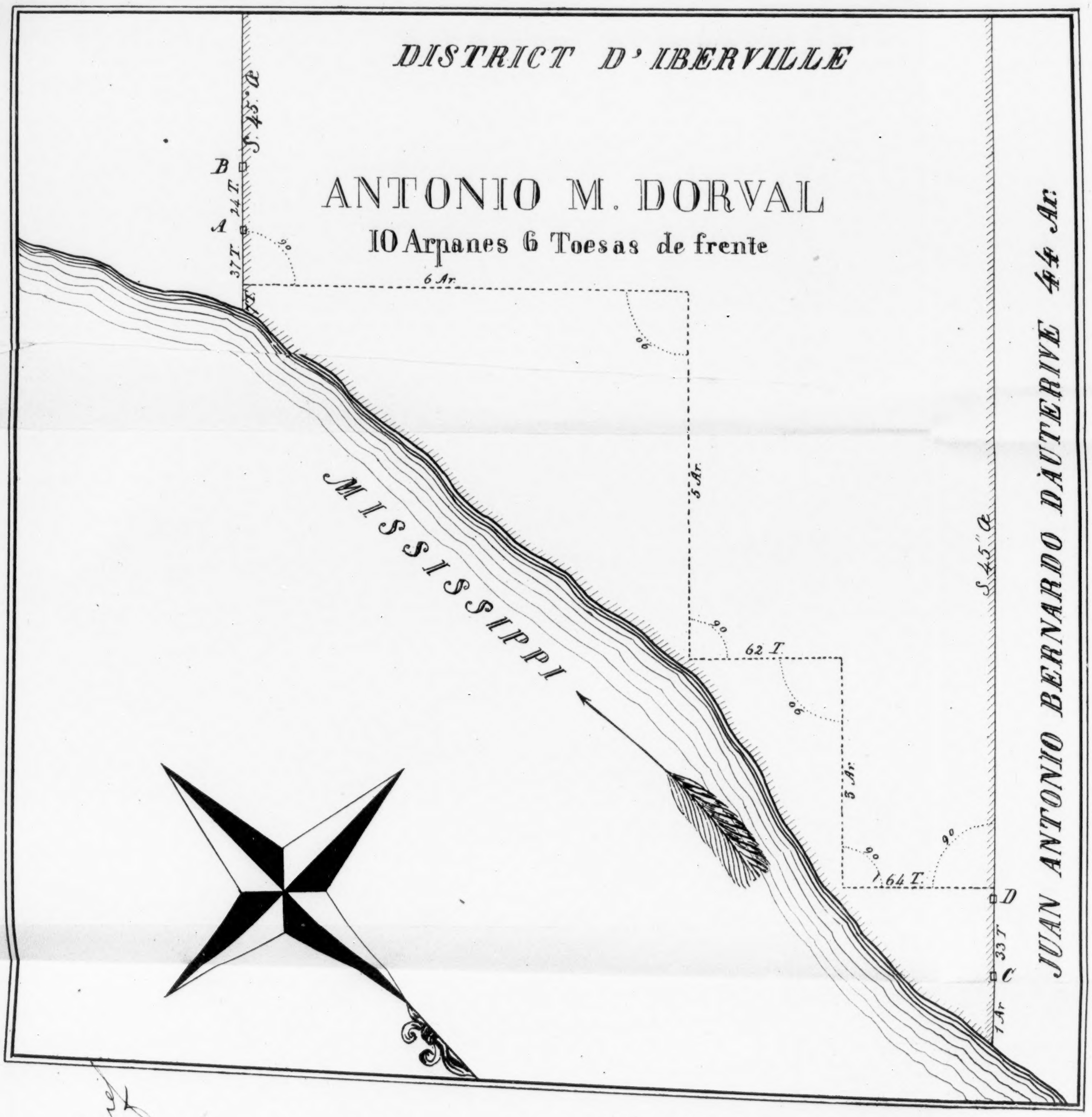
The above statement of the disposition made of the lands within the Dautrive claim is correct, having been carefully prepared from records forming a part of the archives of this office, and I certify that there is no more vacant land within the limits of said Claim than those above stated and comprising 2597.06 acres.

John E. Breaux
Register

Surveyor General's Office
District of Louisiana.
New Orleans May 5th 1877

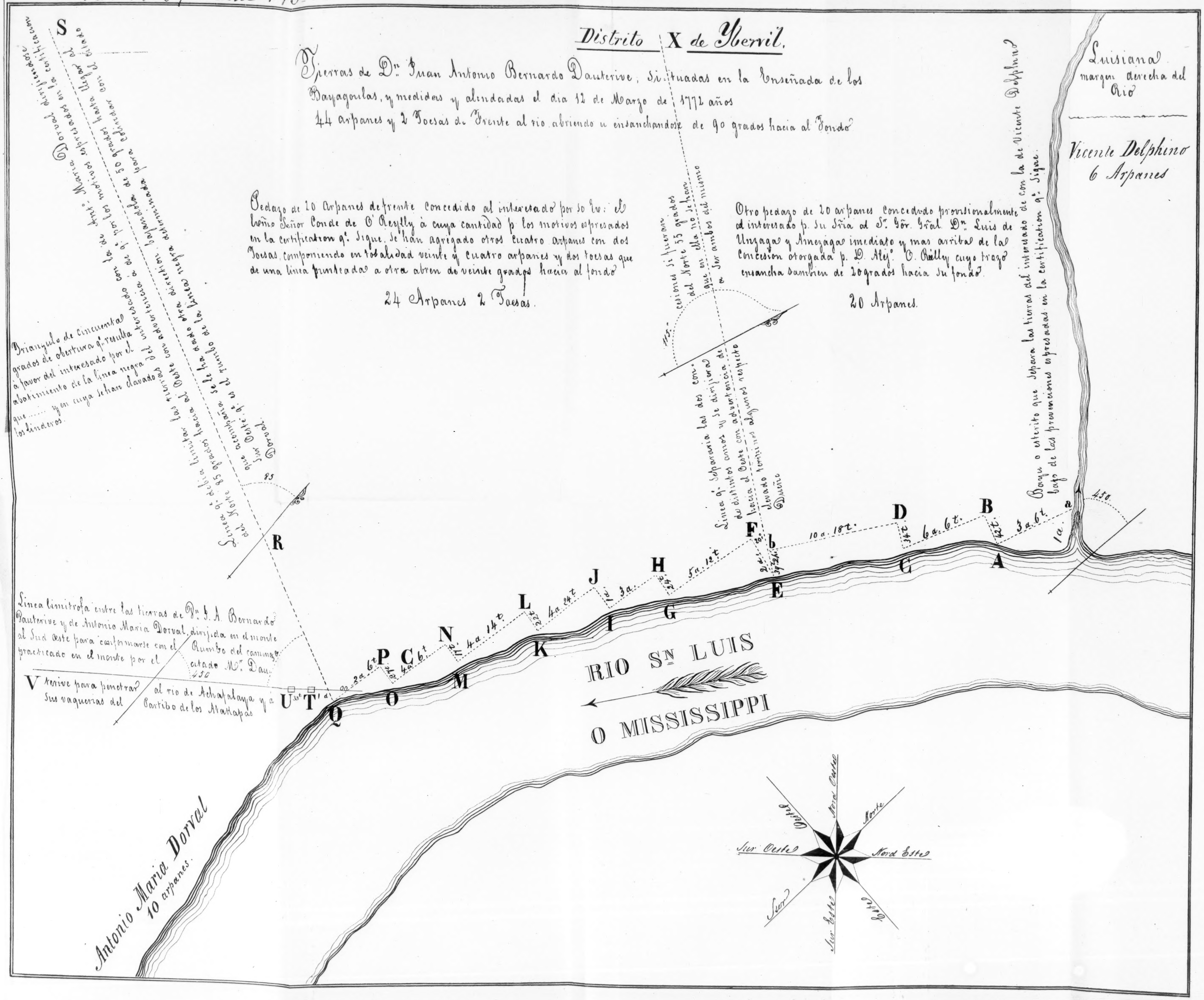
The above map has been prepared from the approved township maps of the U.S. surveys now on file in this Office, to represent the claim of J.B. Dautrive or the "Bayou Goula Concession" in red shaded lines — I certify that the said Claim cannot be satisfied, surveyed or located, on account of prior titles emanating from foreign governments or from the Government of the United States, with the exception of the vacant lands mentioned in the Register's Certificate — The Claims colored yellow, represent claims for which certificates were issued by the Old Board of Commissioners on complete patents under the French or Spanish Government. — The Claims colored blue represent claims for which Certificates were issued by the Commissioners on claims founded on incomplete French or Spanish titles made anterior to the change of Government, and claims which were occupied or possessed ten years previous to the 20th of December 1803, or on which settlement has been made prior to the 1st day of Oct. 1800, all of which have been confirmed by the United States — The Claims colored green represent lands entered as back preemptions, or double concessions, under the Acts of Congress dated March 3d 1811, 11th May 1820 — 28th February 1823 & June 15th 1832 —

Surveyor General, La.



See Rec 129
Translation in Brief
p. 67

See Rec 56. 59 Trans 143 145



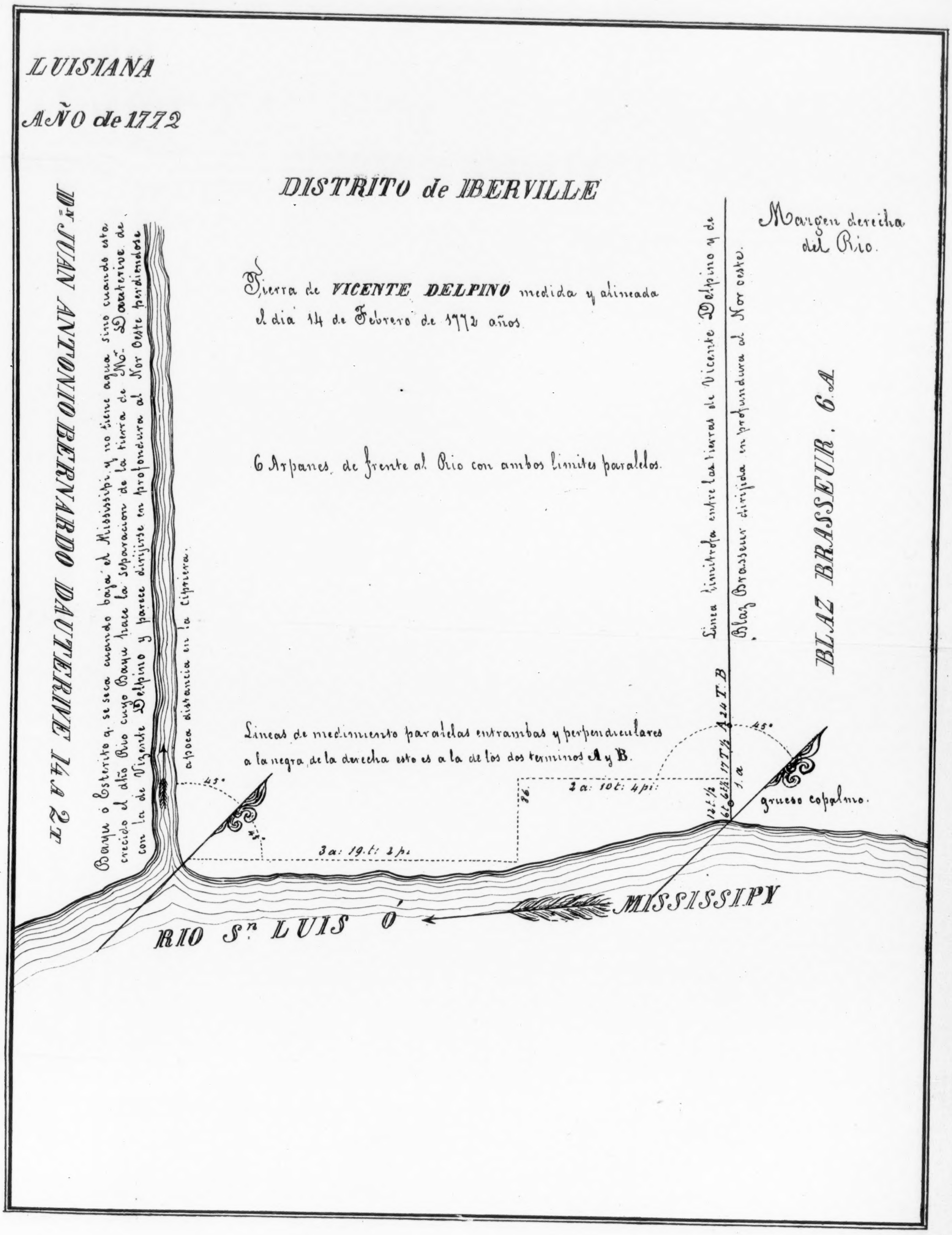
Distrito X de Ybervil.
Tierras de Dn. Juan Antonio Bernardo Dauterive, situadas en la Enseñada de los Bayagoulas, y medidas y alindadas el dia 12 de Marzo de 1772 años
44 arpanes y 2 Toesas de Frente al rio abriendo u ensanchandose de 90 grados hacia al Fondo
Pedazo de 20 Arpanes de frente concedido al interesado por so Ex: El Exmo Señor Conde de O'Reylly à cuya cantidad p. los motivos espresados en la certificacion q.e sigue, se han agregado otros cuatro arpanes con dos Toesas, componiendo en totalidad veinte y cuatro arpanes y dos toesas que de una linea punteada a otra abren de veinte grados hacia al fondo
24 Arpanes 2 Toesas.
Otro pedazo de 20 arpanes concedido provisionalmente al interesado p. Su Sria al Sr. Gor. Gral. Dn. Luis de Unzaga y Amezaga imediato y mas arriba de la Concesion otorgada p. D. Alejo. O. Reilly cuyo trazo ensancha tambien de 20 grados hacia su fondo.
20 Arpanes.
Linea q.e debia limitar las tierras del interesado con la de Ant.o Maria Dorval dirigiendose del Norte 85 grados hacia al Oeste con advertencia à de q.e por los motivos espresados en la certificacion que acompaña se le ha dado otra direction, bajandola de 50 grados hasta llegar al Sur Oeste: q.e es el rumbo de la linea negra determinada para colindar con el citado Dorval.
Triangulo de cincuenta grados de obertura q.e resulta à favor del interesado por el abatimiento de la linea negra que .... y en cuya se han clavado los linderos.
Linea q.e separaria las dos concesiones si fueran de distintos amos y se dirijiera del Norte 55 grados hacia el Oeste con advertencia de que en ella no se han clevado terminos algunos respecto a ser ambos del mismo Dueño
Bayu o esterito que separa las tierras del interesado de con la de Vicente Delphino bajo de las prevenciones espresadas en la certification q.e sigue.
Linea limitrofa entre las tierras de Dn. J. A. Bernardo Dauterive y de Antonio Maria Dorval dirijida en el monte al Sud oeste para conformarse con el Rumbo del camino practicado en el monte por el citado Mr. Dauterive para penetrar sus vaquerias del al rio de Achafalaya y a Cantibo de los Atakapas
Luisiana margen derecha del Rio
Vicente Delphino 6 Arpanes
Antonio Maria Dorval 10 arpanes.
RIO Sn LUIS O MISSISSIPPI
S
R
V
U
T
Q
P
O
C
N
M
L
K
J
I
H
G
F
E
b
D
C
B
A
a
450
85
115
450
1a.
3a 6t.
42t.
6a. 6t.
34t.
10a. 18t.
20°
5a. 12t.
24t.
1a. 3a.
4a. 24t.
22t.
4a. 14t.
17t.
4a. 6t.
27t.
2a. 6t.
Norte
Nord Oeste
Oeste
Sur Oeste
Sur
Sur Este
Este
Nord Este

e Rec. 72-75

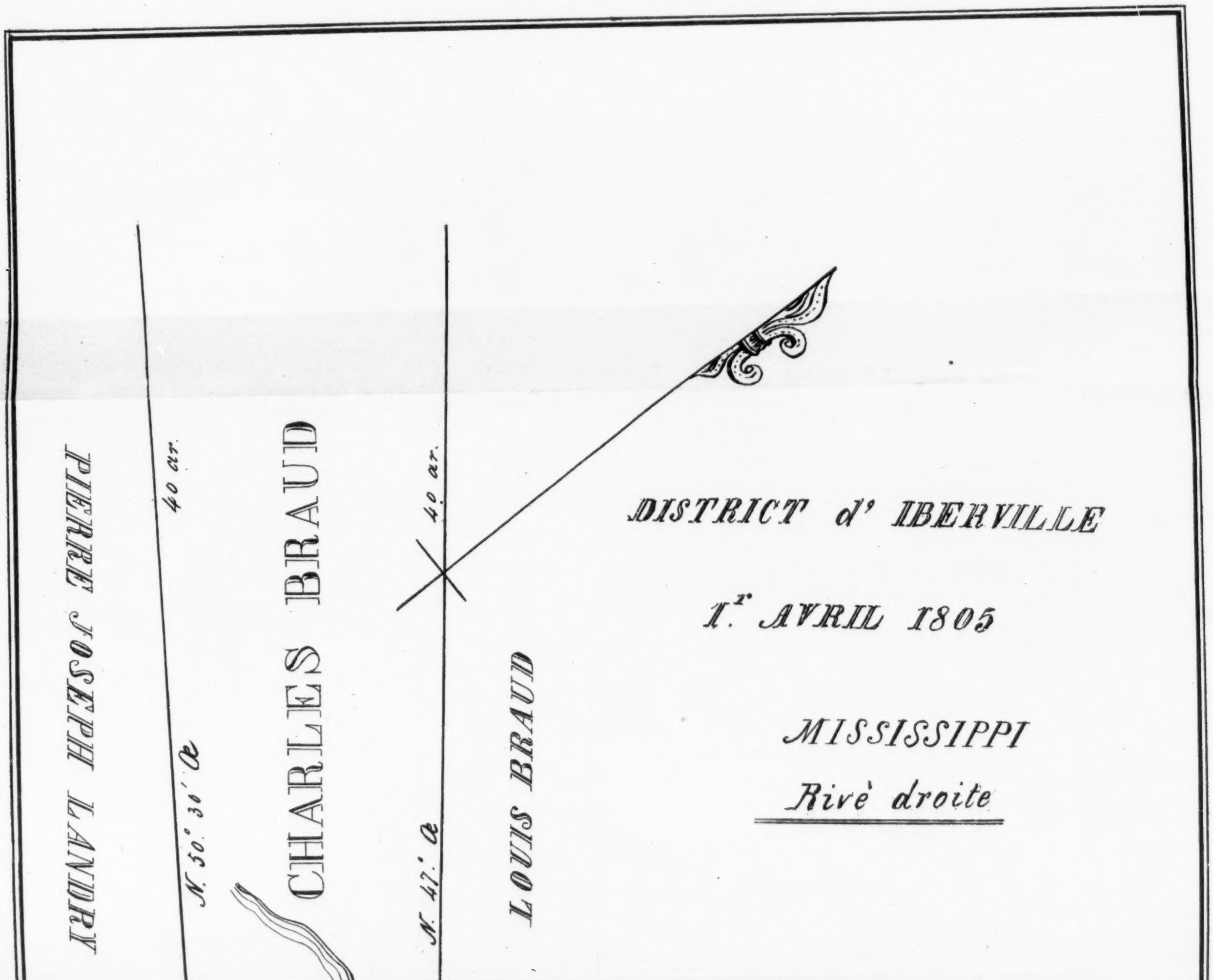
ne_158-160

Between folios 75 & 76.

No 406. folio 197 — 25.


LUISIANA
AÑO de 1772
DISTRITO de IBERVILLE
Margen derecha del Rio.
Tierra de VICENTE DELPINO medida y alineada el dia 14 de Febrero de 1772 años
6 Arpanes, de frente al Rio con ambos limites paralelos.
Dn. JUAN ANTONIO BERNARDO DAUTERIVE 14 a 2t
Bayu ó Estrito q. se seca cuando baja el Mississipi, y no tiene agua sino cuando esta crecido el dño Rio cuyo Bayu hace la separacion de la tierra de Mr. Dauterive de con la de Vizente Delpino y parece dirijirse en profondura al Nor Oeste perdiendose
a poca distancia en la Cipriera.
Linea limitrofa entre las tierras de Vicente Delpino y de Blaz Brasseur dirijida en profundura al Nor oeste.
BLAZ BRASSEUR. 6 A
Lineas de medimiento paralelas entrambas y perpendiculares a la negra de la derecha esto es a la de los dos terminos A y B.
45°
45°
45°
3 a: 19 t: 2 pi
2 a: 10 t: 4 pi:
36
12 t ½
6 t 6 ½
17 T ½
A 24 T. B
1 a
grueso copalmo.
MISSISSIPY
RIO Sn. LUIS Ó

Between folios 79 & 80.



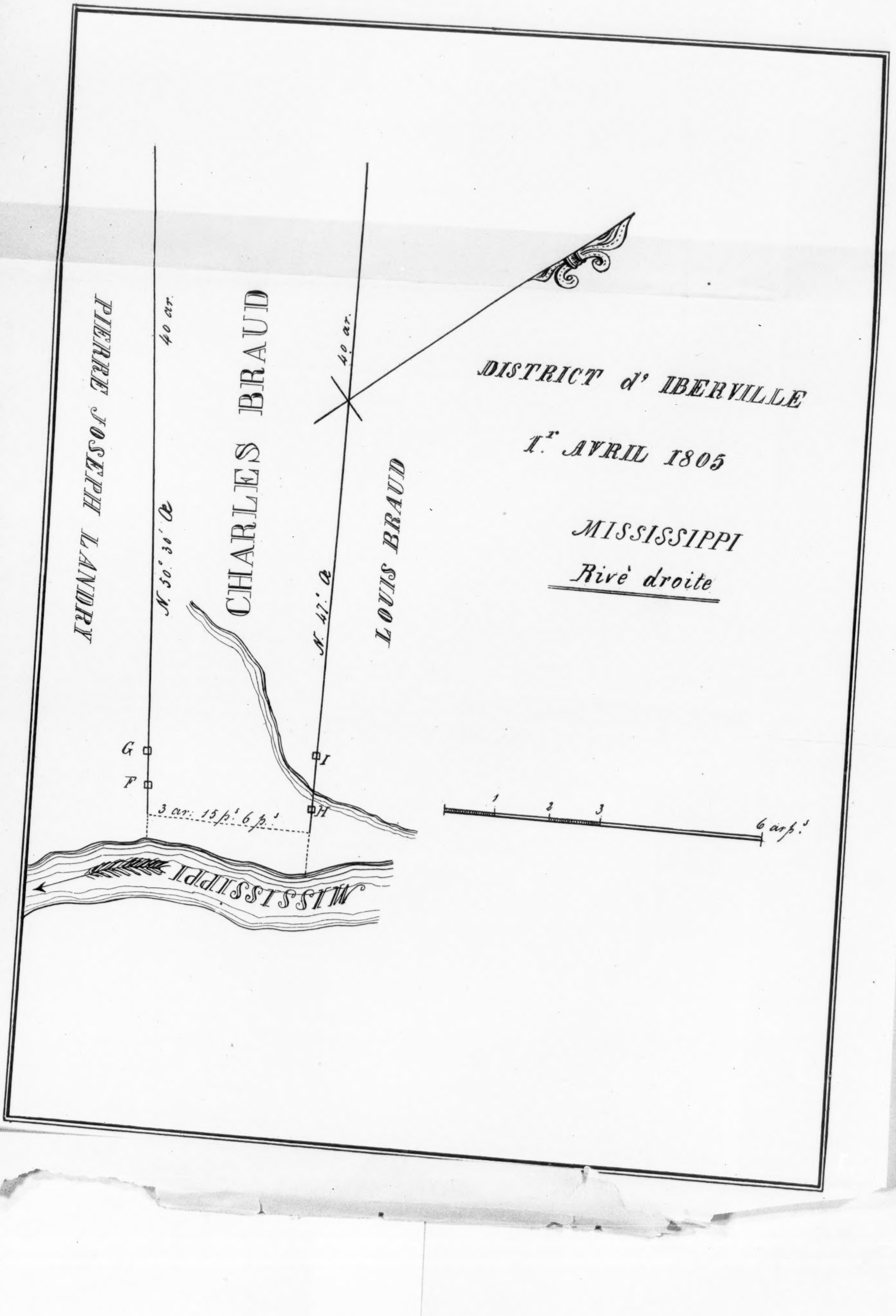
DISTRICT d' IBERVILLE

1er AVRIL 1805

MISSISSIPPI
Rivè droite

ee Rec. 76 – Frame 160

Between folios 79 & 80.



DISTRICT d' IBERVILLE

1r. AVRIL 1805

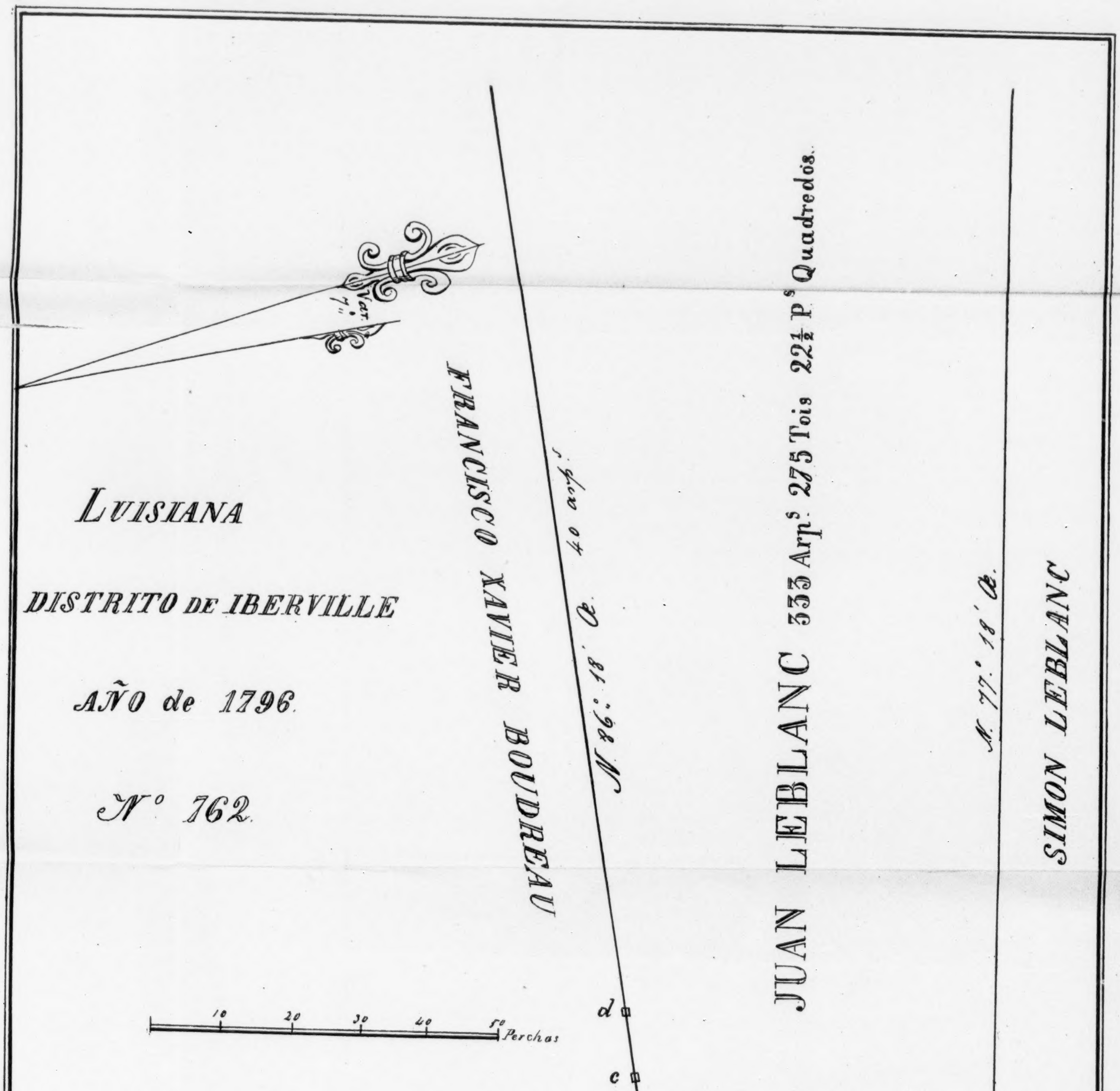
MISSISSIPPI

Rivè droite

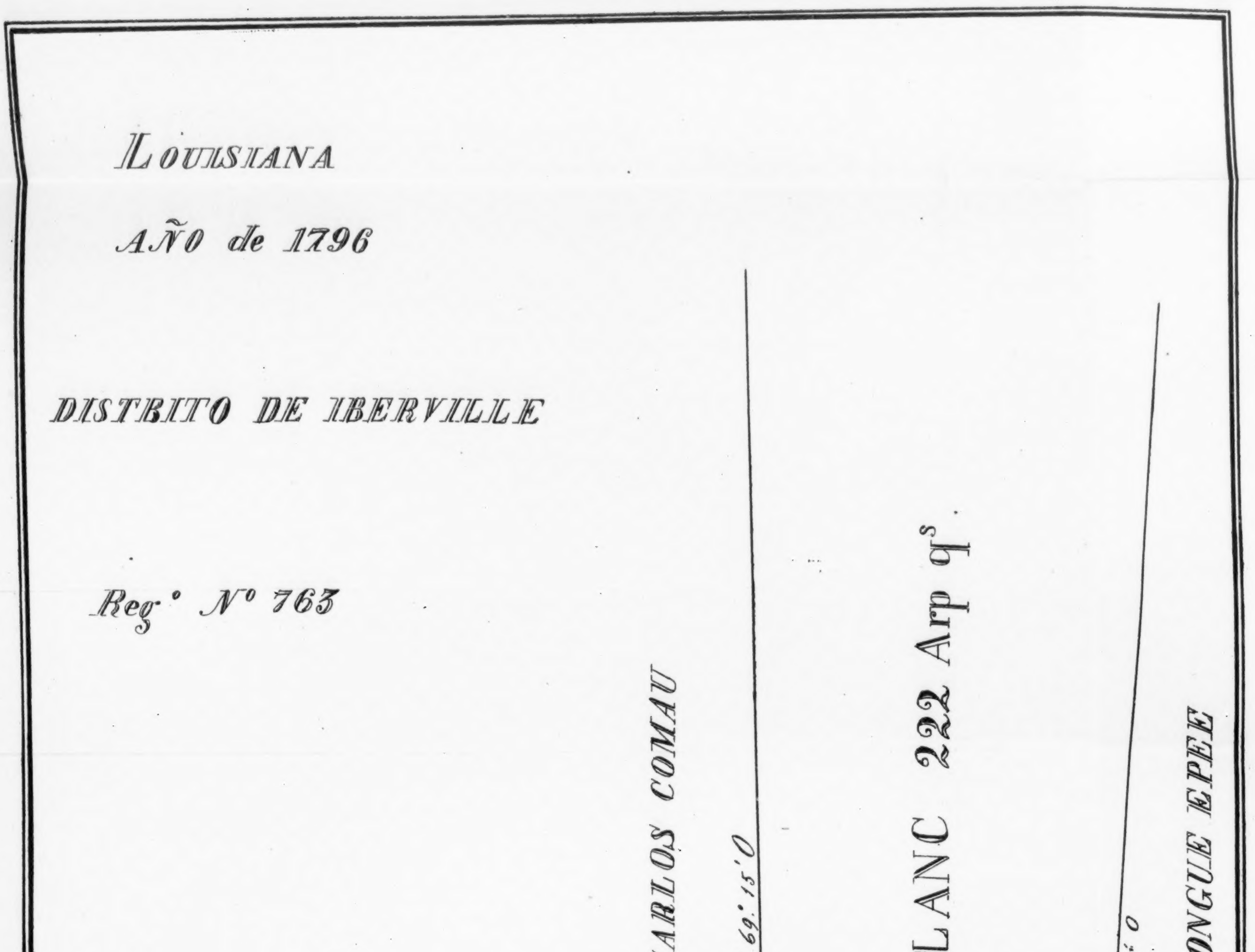
ee Rec. 76 - Frame 160

See Rec. 77 - Frame. 163

Between folios 83 and 84.



Between 89 & 90 (folios)

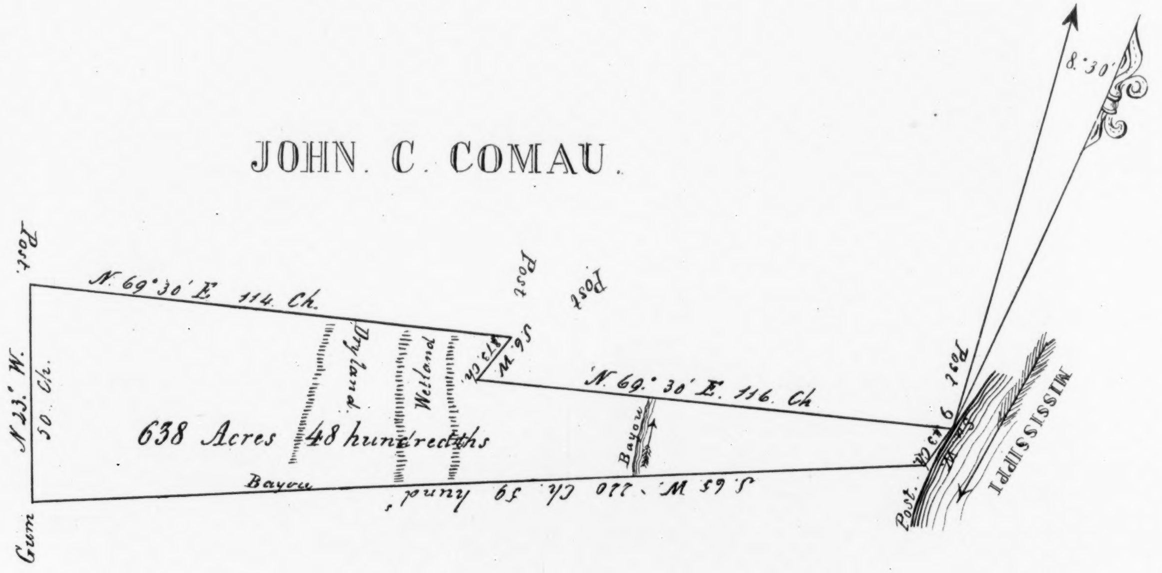


See Rec 90-
Lane-166

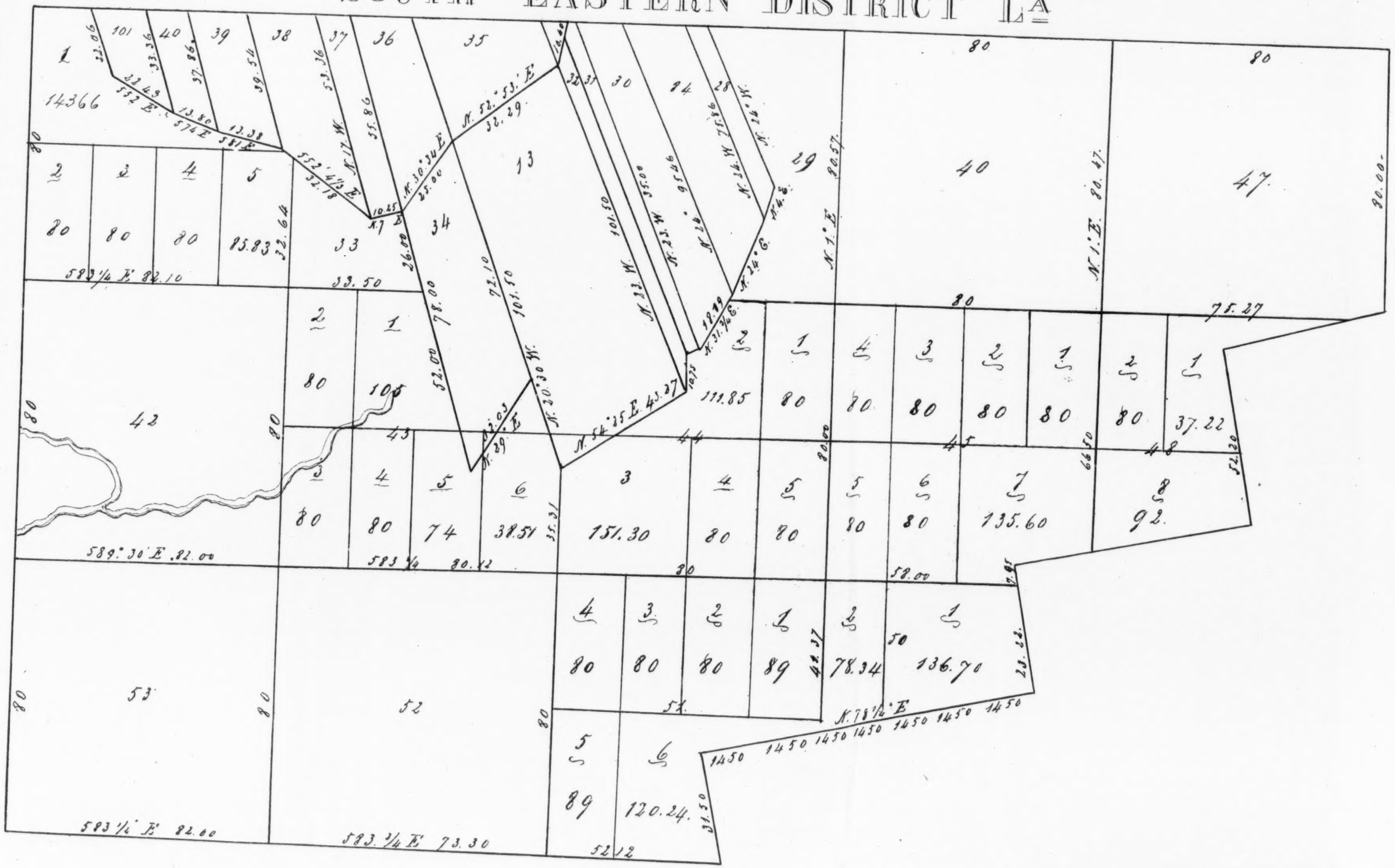
See Rec. 82

Between folios 94 & 95.

JOHN. C. COMAU.

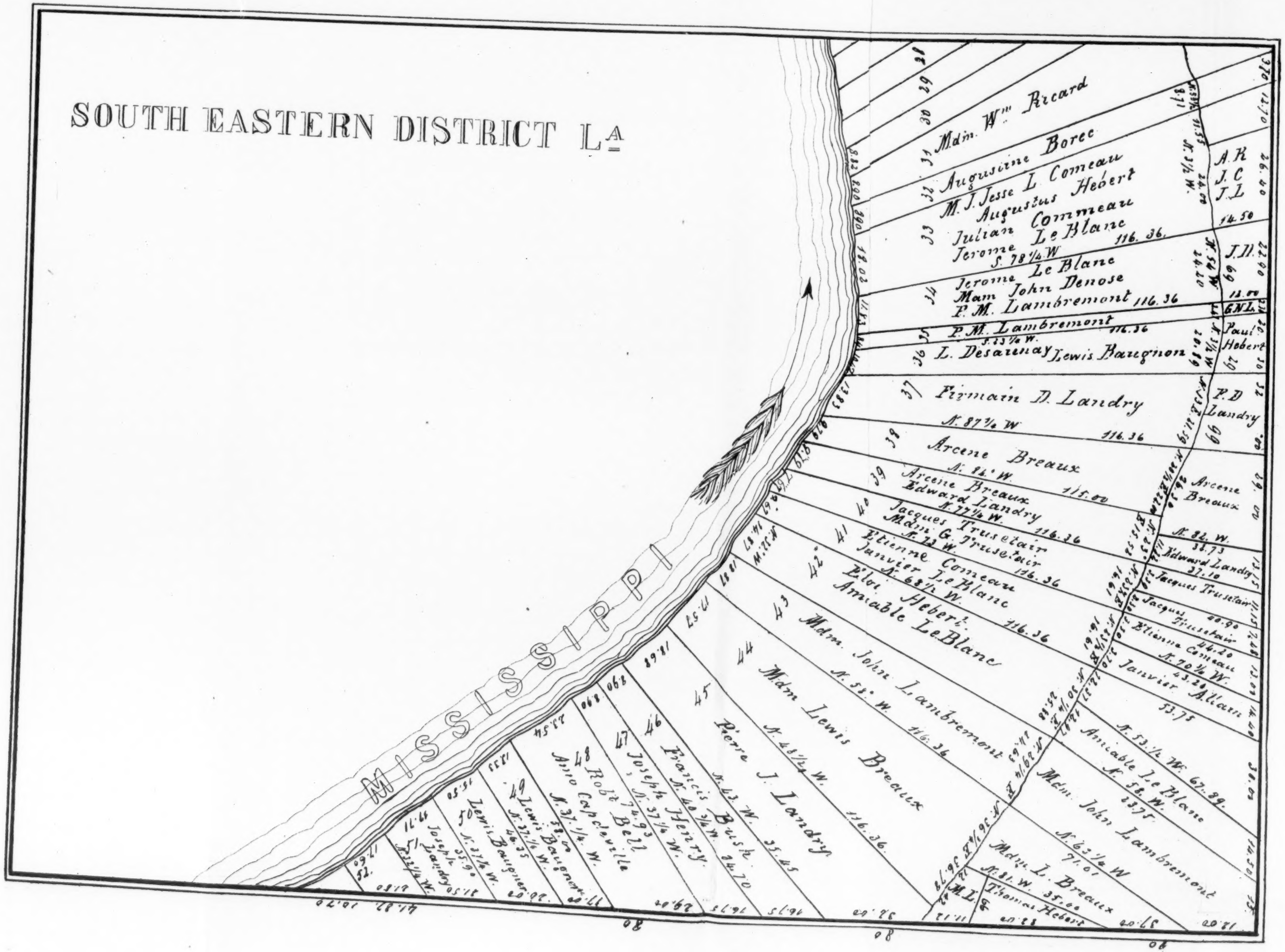


SOUTH EASTERN DISTRICT La

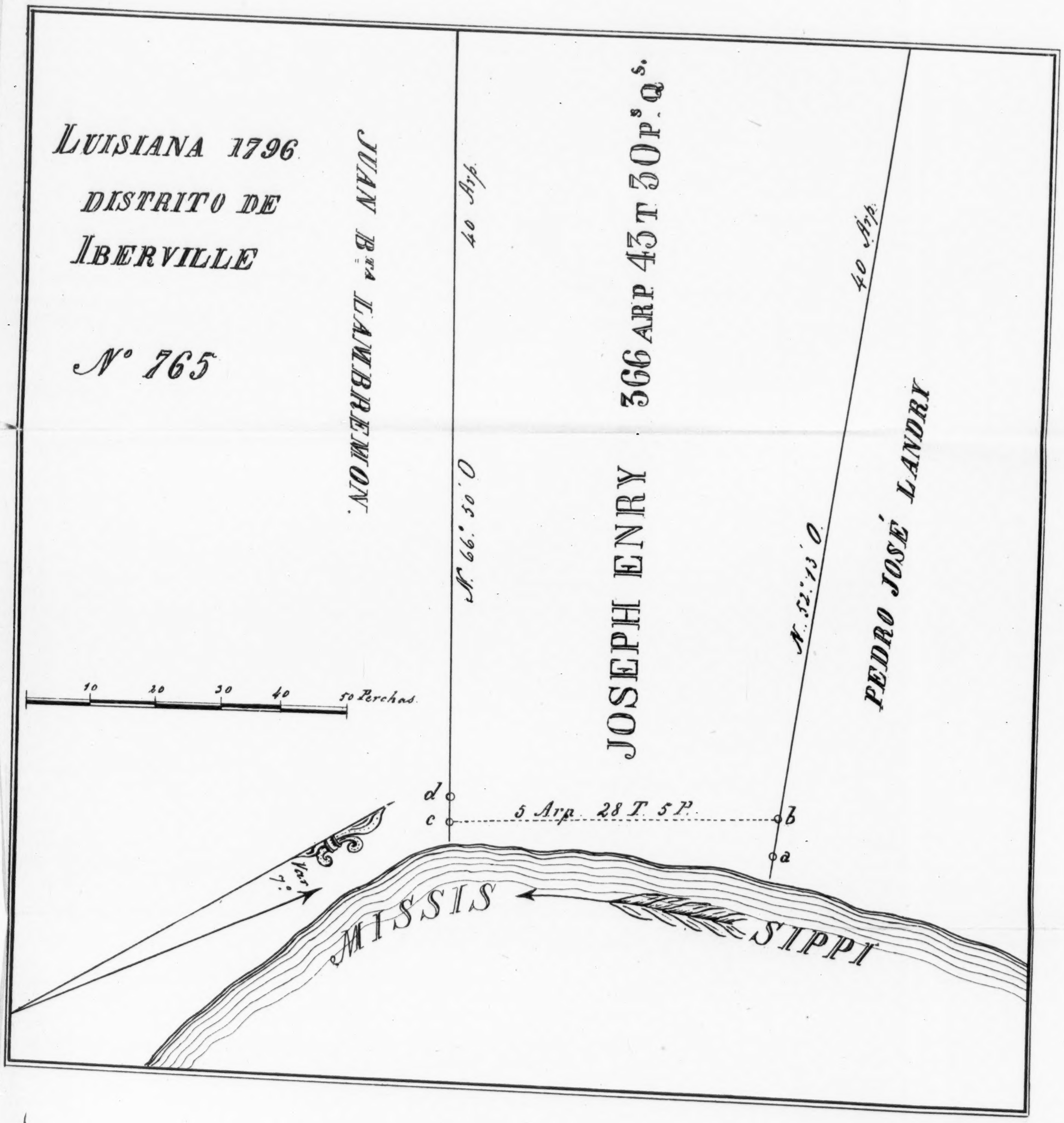


2° Between folios 95 & 96.

1° Between folios 95 and 96.



Between folios 86 and 87.



See Rec. 78
Land 165